



Marital validity & conflict

An overseas marriage in the English courts:
Mark Pawlowski provides an insight into the
complexity of private international law

The story in *Taczanowska (Otherwise Roth) v Taczanowski (Lystek cited)* [1957] P 301, [1956] 3 All ER 457 begins with the German invasion of Poland in September 1939. Many Poles were deported to German forced labour camps.

Krystyna Roth, one such Pole, was deported to Germany, but escaped and journeyed through Europe and, in the winter of 1945, found herself in Italy. As a civilian refugee, she went to Rome to an Italian convent where she resumed her education. Many Poles were active in the war outside Poland. The Polish government in exile established itself in London. Thousands of Polish servicemen escaped from Poland and fought on the Italian front.

On 16 July 1946, Krystyna married Stanislaw Taczanowski in the Parish Church of the Resurrectionists in Rome. They were both Polish nationals, the bridegroom being an officer in the Polish 2nd Corps serving in Italy, in the course of his military duties. The ceremony was performed by a Roman Catholic priest serving as a Polish army chaplain. Several months after the marriage, Stanislaw received orders that the 2nd Corps was to be demobilised, and both he and his wife decided to live in England. They had no desire to return to their native country, which was by then under a Communist regime. They set up home in England and, in November 1947, a child was born to them. They lived together as husband and wife until 1950. Marital relations then broke down irretrievably. On 15 June 1955, Krystyna instituted proceedings in the High Court for a decree of nullity of marriage.

In support of her application, reliance was placed on the rule of the conflict of laws that formal validity of a marriage is governed by the law of the place where the marriage is

celebrated. On this basis, Krystyna's marriage was a nullity because Arts 143, 144 and 145 of the Italian Civil Code were not read over to the parties by the officiating priest and the ceremony of marriage was not registered in the Italian Civil Register of Marriages, as required by Italian law. She also contended that, although by the Italian conflict of laws the marriage would be valid if the parties complied with their national law, the marriage was void by Polish law as well.

On behalf of Stanislaw, on the other hand, it was argued that, despite the general principle that 'the place governs the act', English law will exceptionally recognise a marriage which is valid at common law even though it is not valid by the law of the place of celebration. An extreme example of this principle is where the parties find themselves marooned on a desert island where no civil or Christian form of marriage is available. In these circumstances, it is sufficient if they simply take each other as husband and wife. Equally, it is argued, where a marriage takes place in a country occupied by a belligerent army (in this case, the Polish 2nd Corps under the orders of the British Commander-in-Chief), the requirements of the Italian law as to form no longer apply to the parties. On this reasoning, it was argued that Stanislaw—who at the time of the ceremony of marriage was a member of a military force in occupation of a foreign state—could not be expected to submit to Italian law and, in so far as the parties took each other as man and wife, the marriage was valid under English common law.

The Court of Appeal was undoubtedly in a dilemma. According to press reports, this was a test case involving the validity of 3,000–4,000 similar marriages, and there was an obvious social necessity of preserving their validity. There was no doubt that both

Krystyna and Stanislaw intended to enter into the marriage. Both parties lived as husband and wife from July 1946 until 1950. In November 1947, a daughter was born to them. On these facts, the Court of Appeal unanimously upheld the validity of the marriage by falling back on the common law as the *lex fori* (ie the law of the court in which the case was being tried), the marriage having been celebrated by the exchange of words before a properly ordained priest.

The decision, however, is open to criticism on a number of grounds. First, by the application of the *lex fori*, the validity of the marriage turns essentially on the accident of the court in which it is put in issue—marriages stand or fall according to the choice of forum. It is, indeed, remarkable that a marriage celebrated in a foreign country between persons domiciled in another foreign country, who had never set foot in England and who never intended to do so at the time of their marriage, can derive formal validity by compliance with the requirements of the English common law.

Second, the decision lacks merit as it fails to comply with the desirability of international recognition. For example, what would have been the legal position of Krystyna if she had returned to Poland after the Court of Appeal decision in 1957 and there married another man? By English law, there being a valid prior marriage, the second marriage would be considered a nullity and any children by that marriage would be illegitimate.

Third, what if A and B, domiciled in country X, come to country Y and marry there, but evidence an intention that they do not wish to submit to the formal requirements of Y's law? It would seem that English law would hold the marriage valid if the ceremony complied with the English common law. The validity of the marriage would be unaffected by Y's law. The notion, however, that the presumption of subjection to local law can be displaced simply by the parties' mutual intention was firmly rejected in *Merker v Merker* [1963] P 283, [1962] 3 All ER 928, where the decision in *Taczanowska* was confined to cases of a foreign army of occupation and to persons in a strictly analogous situation to members of such an army (eg members of an organised body of escaped prisoners of war).

By way of postscript, Stanislaw Taczanowski obtained a divorce from his wife in 1957, four years after the commencement of the initial nullity proceedings. He later died in 1972. Krystyna Roth married subsequently in 1957, but divorced in 1968. She married her third husband in 1969 and emigrated to the United States.

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