property owned by a husband or wife is owned by both. A more moderate approach has been adopted in Sweden where each spouse administers his or her own property separately, but when the marriage comes to an end, whether by death or divorce, each is able to claim a half interest in the assets of the other. So it can be seen that problems relating to marriage property have received special attention in that part of the world. If the wider interpretation of sections such as section 7 of the 1956 Act is adopted, and the court, in exercising the discretion, leans in favour of equality in the case of property acquired by joint effort, as the Court of Appeal did in *Rimmer v. Rimmer*,[12] then our courts may well strike a happy medium.

If His Honour had not been able to discover the actual intention of the parties he would have felt unable to apply section 7 of the 1956 Act because it was passed too late to affect this action, but would have considered himself bound by the decision in *Jess B. Woodcock and Son Ltd. v. Hobbs*[13] to apply section 20 of the 1928 Act though the proceedings here were not brought under that section. His doubts as to whether that decision would be followed by higher courts in this country may well be justified, but section 7, sub-section 7, of the 1956 Act has removed this problem for Victorian courts by its express provision that the discretion is exercisable in proceedings other than proceedings under the section.

J. S. COX

PAPADIMITROPOULOS v. THE QUEEN[1]

Criminal Law—Rape—Consent Induced by Fraud—Misrepresentation as to Marriage

The appellant, a Greek, was convicted of rape by a jury before Gavan Duffy J. His appeal to the Full Bench of the Supreme Court of Victoria[2] being dismissed,[3] he appealed to the Full Bench of the High Court. The jury found that he had represented to an immigrant Greek girl, who spoke little or no English, that they were married when in fact they had merely applied to the registry office and given the required statutory notice, and that as a result of his fraudulent misrepresentation the couple had lived together for a short time and had sexual intercourse. P. had then deserted the girl and gone to Sydney, apparently on hearing gossip as to the girl's prior moral reputation, although he seemed originally to have intended to actually marry her.

The appellant contended that there had in fact been consent to

[12] *Supra*, n. 6. [13] *Supra*, n. 11.

[1] [1958] Argus L.R. 21. High Court of Australia; Dixon C.J., McTiernan, Webb, Kitto and Taylor JJ. [2] Lowe, O'Bryan and Monahan JJ. [3] Monahan J. dissenting.

the act of sexual intercourse itself and that therefore, notwithstanding any fraud or deception on his part, there could be no rape since the prosecutrix understood the nature and quality of the act. The Supreme Court was unanimous in asserting that there was a distinction between a consent given as a result of a deception or mistake as to the nature of the act of intercourse itself, and a consent to that act induced by a mistake or deception as to a matter antecedent or collateral thereto. Under the former head were grouped those decisions relating to a consent given to supposed medical treatment[4] and those relating to the impersonation of a husband,[5] whilst under the latter were grouped situations arising from protestations as to the seducer's wealth, position, freedom to marry and similar persuasions, but while in the former case the offence might be made out, in the latter consent was considered to be real.

However, while the majority[6] felt that the representation in the instant case was within the first category and so upheld the conviction, the dissentient, Monahan J., preferred to classify it under the second head, the majority apparently being greatly influenced by the difference in moral character between marital intercourse and fornication, while Monahan J. stressed the fact of consent to the sexual act in this case and the clear comprehension of its nature.

The High Court unanimously upheld the appeal and, although accepting the dichotomy proposed by the Supreme Court, preferred to emphasize the comprehending consent of the woman to the act, and the absence of any mistake as to the identity of the accused, apparently considering the fraud in the instant case to be one as to status and not identity, with reference being made to the absence of any previous suggestion that even the most heartless bigamist was guilty of rape.[7]

It is submitted that the decision of the high Court is eminently sound, both as a matter of law and of social policy. Rape is an extremely serious offence—until recently, a capital offence—and the dividing line between the non-violent forms of rape and mere fraud needs to be starkly drawn so that righteously indignant courts do not so widen the area of the crime as to make serious offences of the commonplaces of seduction, morally reprehensible though such con-

[4] *Reg. v. Case* (1850) 1 Den. 580; 169 E.R. 381; *Reg. v. Flattery* [1877] 2 Q.B.D. 410 and the analogous case of *R. v. Williams* [1923] 1 K.B. 340. The Canadian case of *R. v. Harms* [1944] 2 D.L.R. 61, was expressly disapproved by the High Court in the instant case and the criticism in the editorial note to the report of that case adopted.

[5] The earlier cases seem to have rejected the possibility of rape in such cases, providing the woman be awake. This view was later rejected. *R. v. Camplin* (1845) 1 Den. 89; 169 E.R. 163; *R. v. Mayers* (1872) 12 Cox 311; *R. v. Jackson* (1882) Russ. and Ry. 187; 168 E.R. 911; *R. v. Saunders* (1838) 8 Car, and P. 265; 173 E.R. 488; *R. v. Williams* (1838) 8 Car. and P. 286; 173 E.R. 497; *R. v. Clarke* (1854) Dearsley 397; 169 E.R. 779; *R. v. Barrow* (1868) L.R. 1 C.C.R. 156.

[6] Lowe and O'Bryan JJ.

[7] [1958] Argus L.R. 21, 26.

duct may be. Further, the difficulties already existing with regard to proof in sexual crimes should make courts wary in extending the ambit of the offence lest too much come to depend on the possibly uncorroborated evidence of the prosecutrix as to the representations of the accused—

> 'Heav'n has no rage, like love to hatred turn'd,
> Nor Hell a fury, like a woman scorn'd.'[8]

J. K. CONNOR

RENDELL v. ASSOCIATED FINANCE PTY LTD[1]

Conversion—hire purchase—accession—accessory attached to motor vehicle—whether property passes to owner of vehicle

In August 1955 one Pell took a 1942 Chevrolet utility truck from the defendant finance company under a hire-purchase agreement containing a clause that 'Any accessories or goods supplied with or for or attached to or repairs executed to the goods shall become part of the goods'. The trader who introduced this business to the finance company was the defendant Connley, who gave a written guarantee to the company for the due performance by Pell of all his obligations under the agreement. In September Pell bought under a normal hire-purchase agreement from the complainant, Rendell, a Chevrolet 'short motor', which he subsequently installed in the truck in place of the engine then in it. Rendell shortly afterwards learnt of this substitution. Pell defaulted in his payments to the defendant company, and in February 1956 Connley, acting as the latter's authorized agent, repossessed the truck in accordance with the terms of the hire-purchase agreement. Neither defendant was at the time aware that Pell had installed another engine. In March the company called on Connley, as Pell's guarantor, to pay the balance owing and this he did in May, when the two defendants agreed that in consideration of such payment Connley was to hold the truck in his own right. Rendell subsequently demanded £53 under a contract alleged to have been made between him and the defendants or one of them, and alternatively as damages for conversion or detention of the engine. In the Court of Petty Sessions he obtained an order on the ground of conversion against both defendants for £53 with costs. In addition the magistrate stated that in any case he would have made an order against Connley on the contract. The defendants obtained an order *nisi* to review, which the Full Court discharged in a written judgment delivered by O'Bryan J.

[8] William Congreve, 'The Mourning Bride'.

[1] [1957] V.R. 604; [1958] Argus L.R. 30. Supreme Court of Victoria; Lowe, O'Bryan, and Barry JJ.