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v.  
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[VASSILIADES, J.]

ATHINA DARMANIN THEN ATHINA IOANNIDOU,  
*Petitioner.*

v.

MICHAEL DARMANIN,

*Respondent.*

(*Matrimonial Petition No. 13/61*).

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*Matrimonial Causes—Jurisdiction—Wife's Petition for divorce—Wife, a member of the Greek-Orthodox Church—Husband, a Maltese British subject, member of the Roman-Catholic Church—Marriage celebrated in Egypt in accordance with the rites of the latter Church, under the provisions of section 22 of the English Foreign Marriages Act, 1892—Parties permanently residing in Cyprus as from November 1954—Jurisdiction of the High Court—The instant cause is cognizable by the High Court—The Courts of Justice Law, Cap.8 sections 20, 33 and 34—The Courts of Justice Law, 1960 (Law of the Republic No. 14/1960), sections 19(b) and 29(2) (b)—Articles 111 and 160 of the Constitution—Law of the Greek Communal Chamber No. 9/1962—Article 2 of the Constitution.*

*Constitutional Law—Articles 2, 111 and 160 of the Constitution.*

*Matrimonial Causes—Petition for divorce—Cruelty.*

The parties were married on the 4th November 1944 by a military chaplain at Saint Sebastian's Church of the British Garrison at Alexandria, Egypt, according to the rites of the Roman Catholic Church, under the provisions of section 22 of the Foreign Marriages Act 1892 of the British Imperial Parliament. The parties lived in Egypt as husband and wife for about ten years after their marriage, until November 1954 when they came to live in Cyprus. Four children were born of their marriage.

The husband is a Maltese, British subject and professes the Roman Catholic religion, and the wife an Egyptian of Greek origin, professing the Greek-Orthodox religion. The wife petitioned the High Court for dissolution of her marriage on the ground of her husband's persistent cruelty.

Article 111. 1 of the Constitution reads as follows: "Subject to the provisions of this Constitution any matter relating to betrothal, marriage, divorce, nullity of marriage, judicial

separation or restitution of conjugal rights or to family relations other than legitimation by order of the court or adoption of members of the Greek-Orthodox Church or of a religious group to which the provisions of paragraph 3 of Article 2 shall apply shall, on and after the date of the coming into operation of this Constitution, be governed by the law of the Greek-Orthodox Church or of the Church of such religious group, as the case may be, and shall be cognizable by a tribunal of such Church and no Communal Chamber shall act inconsistently with the provisions of such law".

Article 160.1 provides : "A communal law made by the Communal Chamber concerned shall, subject to the provisions of this Constitution, provide for the establishment, composition and jurisdiction of courts to deal with civil disputes relating to personal status and to religious matters which are reserved for the competence of the Communal Chambers by the provisions of this Constitution".

Section 19 of the Courts of Justice Law, 1960, provides : "The High Court shall, in addition to the powers and jurisdiction conferred upon it by the Constitution, have exclusive original jurisdiction—

(a).....(b) save where a matrimonial cause is, under article 111 of the Constitution, cognizable by a tribunal of a Church or by a court established by a Communal Law under article 160 of the Constitution, in relation to matrimonial causes and matters.....and such other powers as were before Independence Day (viz. 16th August, 1960) vested in or exercisable by the Supreme Court of Cyprus under the Law repealed by this Law". (The Law repealed just referred to is the Courts of Justice Law, Cap.8).

Section 29(2) provides : "The High Court in exercise of the jurisdiction—(a).....(b) conferred by paragraph (b) of section 19 shall apply the law relating to matrimonial causes which was applied by the Supreme Court of Cyprus on the day preceding Independence Day, as may be modified by any law made under the Constitution".

By section 33(2) of the Courts of Justice Law, Cap.8 in force on the day preceding Independence Day, the law relating to matrimonial causes which was applied by the former Supreme Court of the Colony of Cyprus, was the law relating to matrimonial causes administered for the time being by the High

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Court of Justice in England. On the other hand by section 34(a) (1) (aa) of Cap. 8, the jurisdiction of the former Supreme Court to hear and determine matrimonial causes under section 20(b) thereof covers cases where either party is a member of the Greek-Orthodox Church and the marriage has not been celebrated in accordance with the rites of the Greek-Orthodox Church, as it is the case in the instant proceedings.

By Law No. 9 of 1962 of the Greek Communal Chamber, Communal Courts have been established competent to deal with matters pertaining to the "personal status" of members of the Greek Community in the Republic within the definition of that term in section 2(1) of the said same Law, whereby the following matters are expressly excluded, viz. matters governed by the Canon Law of the Greek-Orthodox Church (as provided in article III of the Constitution) or of the Church of any religious group which opted for the Greek community under Article 2 of the Constitution.

*Held* : I. On the question of jurisdiction, following *Phidias Christodoulou v. Katerina Christodoulou* (reported in this Volume on p. 68, ante):

1. (1) This is not a cause cognizable by a tribunal of a Church under article III of the Constitution.

(2) Neither is it a cause cognizable by the Greek Communal Courts established by Law No. 9/62 of the Greek Communal Chamber.

(3) Falling outside the saving lines of section 19(b) of the present Courts of Justice Law (i.e., No. 14 of 1960) (*supra*) the petition remains within the exclusive original jurisdiction of this Court, in the exercise of the powers which before Independence Day vested in, and were exercisable by, the Supreme Court of Cyprus under the provisions of sections 20(b) and 33(2) of the Courts of Justice Law, Cap. 8.

II. On the merits : (1) The conduct on the part of the respondent entitles the petitioner to the dissolution of her marriage on the ground of persistent cruelty on the part of her husband under the provisions of section 1(1)(c) of the Matrimonial Causes Act, 1950, as amended and in force on the 16th August 1960, which is the law applicable in the Matrimonial Jurisdiction of this Court to the case in hand.

(2) Decree *nisi* granted on the ground of persistent cruelty

on the part of respondent over a period of more than 3 years before the presentation of the petition.

(3) Application for decree absolute may be made after three months from to-day.

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Cases referred to :

*Phidias Christodoulou v. Katerina Christodoulou*, (Matr. Pet. 15/61 — Decision of the 25/5/62, reported in this Volume on p. 68, ante, followed.

### Matrimonial Petition.

Petition by the wife for the dissolution of her marriage on the ground of cruelty :

*N. Pelides* for the Petitioner.

Respondent *absent*, duly served.

*Cur. adv. vult.*

VASSILIADES, J.: This is a wife's petition for divorce on the ground of cruelty.

The parties were married on the fourth November, 1944, by a military chaplain at Saint Sebastian's Church of the British Garrison at Alexandria, Egypt, according to the rites of the Roman Catholic Church, under the provisions of section 22 of the Foreign Marriages Act, 1892, of the British Imperial Parliament. A certified extract from page 102 of the Marriage Register of the R.C. Garrison Church, is attached to the record.

The respondent, then a bachelor, aged 23, was at that time, serving in the British Army as a driver, attached to 231 G.T. Coy, R.A.S.C., Middle East Forces. The petitioner was a spinster of the age of 20, living with her family at Ismailia, Egypt.

There can be no question that this was a legal marriage which gave to the parties the status of legally married persons.

The parties lived in Egypt as husband and wife, for about ten years after their marriage, until November, 1954, when they came to live in Cyprus. During this period they had four children, three boys and a girl, born to them in July 1945, in January 1947, in February 1948, and the last

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in May 1954, about six months before they came to this country.

The husband is a Maltese, British Subject, professing the Roman Catholic religion; the wife is an Egyptian of Greek origin, professing the Greek-Orthodox religion. When they came to Cyprus, the parties lived in a house at Kaimakli, one of the suburbs of Nicosia, which they took on rent, and made it their matrimonial home. Later they moved to another house at 49, Germanou Patron Street, Nicosia, where they lived until they parted in August, 1961.

Soon after their arrival in this country the husband took employment as a store-keeper in the service of the Royal Air Force, Nicosia, and later, finding that her husband's pay was not sufficient for the requirements of the family, the wife also went to work, at first in the employment of the R.A.F., and later as a bar-maid in different places of entertainment, with her husband's approval.

According to the evidence of the petitioner-wife, the couple have been in matrimonial difficulties, practically ever since they were married, owing, she said, to certain bad habits and weaknesses of the husband. He had the habit of taking excessive quantities of alcoholic drinks to the extent of getting drunk quite often; and then he was inclined to be rough with her, ill-treating her, she stated, and beating her, sometimes. Here in Cyprus, the respondent started taking also the drug known as 'Kannaouri' (Indian hemp); he engaged in gambling; he took no interest in his family; and during their quarrels he used to beat his wife, sometimes in the presence of their children and sometimes in the presence of strangers in the public street, when she ran out of the house to save herself from his hands. On one occasion he injured one of her eyes, the petitioner stated, and she had to go to an oculist; and on several occasions, she reported him to the Police for assaulting her.

After one such incident, when her husband struck her repeatedly on the face, and kicked her on the stomach, and other parts of her body, in the presence of the children the petitioner told her husband, she stated, that she was not going to tolerate that any more; and that she would go away from him taking the children with her. His reply was that she could do as she pleased, she said, and that he was not going to take any more interest in her, if she left.

In fact, soon after that incident, the petitioner left the matrimonial home, taking all four children with her. She went to her mother in Athens, where she placed the children at school ; and leaving them in the care of her mother, she returned to Nicosia about a month later, and went to live in a flat, away from her husband. She still works as a barmaid to maintain herself and the children in Athens.

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When the respondent saw her in Cyprus again, he approached her for a reconciliation, she said, which she declined. On that occasion, the respondent again asked her for money and begged her, she added, to lend him £10 for a few days, which she did. But the respondent failed to return the money ; and when she sent for it, he waited for her in the street outside her place of work, where he again insulted and assaulted her, she said.

It was in these circumstances that she consulted a lawyer, and had these proceedings instituted for divorce ; or such other "relief as may be just". The respondent who was personally served on the 14th October, 1961, with copy of the petition and the affidavit in support, entered no appearance, and did not defend the suit.

On the evidence before me, which I accept, I find the facts as stated above. And I find that such facts, amount to persistent cruelty on the part of the respondent husband, justifying the petitioner for leaving the respondent in August, 1961, as she stated ; and for staying away from him, ever since.

The first question to be considered is the question of jurisdiction. In *Phidias Christodoulou v. Katerina Christodoulou* (Matr. Pet. 15/61 - Decision of the 25/5/62) where the question of jurisdiction was raised, I approached the matter, first, with the law as it stood before the establishment of the Republic ; and then I proceeded to deal with the position as affected by the Constitution. I propose making a similar approach in this case.

Section 19 of the Courts of Justice Law, 1960, (No. 14 of 1960) provides that : —

"19 The High Court shall, in addition to the powers and jurisdiction conferred upon it by the Constitution, have exclusive original jurisdiction

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(a) .....  
(b).....in relation to matrimonial  
causes and matters .....such.....  
powers as were before Independence Day, vested  
in or exercisable by the Supreme Court of Cyprus  
under the Law repealed by this Law”.

But these powers are conferred—

“save where a matrimonial cause is, under article 111 of the Constitution, cognizable by a tribunal of a Church or by a court established by a Communal Law under art. 160 of the Constitution...” as provided in the first four lines of section 19(b).

I shall, therefore, proceed to deal now, with the question whether the Supreme Court of the Colony of Cyprus would have the power to deal with the present cause, before Independence Day (16.8.60) under the Law repealed by the present Courts of Justice Law (No.14 of 1960) ; that is to say under Chapter 8 of the Statute Laws of the Colony of Cyprus, which was then the Courts of Justice Law.

Section 20 of that Law provided the Supreme Court with “exclusive original jurisdiction” in matrimonial causes, subject to the exceptions in section 34 of the same statute, which saved the existing jurisdiction of the ecclesiastical tribunals in certain matrimonial causes ; and the jurisdiction of the Turkish Family Courts, in the matters prescribed in the section

In *Phidias Christodoulou v. Katerina Christodoulou* (*supra*) I set out the relative part of section 34 to show that the petition before me, not being a matrimonial cause in a marriage celebrated in accordance with the rites of the Greek—Orthodox Church, did not fall within the exception in section 34(a) (i) (aa) ; or within any of the other exceptions in the section. I find it unnecessary to repeat the process here. It is sufficient to say again that this also—

“Being a matrimonial cause outside the exceptions in section 34, the petition clearly falls, in my opinion, within the jurisdiction conferred on the Colonial Supreme Court of Cyprus by section 20 of the Courts of Justice Law in force prior to the establishment of the Republic. And the parties would be entitled to have recourse to that jurisdiction”.

Moreover, in this case same as in that petition, no ecclesiastical tribunals that I know of in this country, would be inclined to deal with this cause ; to take cognizance of it. And this is yet one more case, where the parties have very important and material legal rights to protect by recourse to the appropriate Court.

So I now come to the second part of the question of jurisdiction, that is to say : whether the case falls within the saving four lines of section 19(b) of the present Courts of Justice Law.

Here again, there are two sub-divisions of the question, which must be looked into :—

- (a) whether under article 111 of the Constitution this is a matrimonial cause “cognizable by a tribunal of a Church ; ” and
- (b) whether it is a cause cognizable by a court established by a Communal Law under article 160 of the Constitution.

The answer to both these questions, must, in my opinion, be, clearly, in the negative.

The ecclesiastical tribunals of the Greek-Orthodox Church in Cyprus, will not take cognizance, as far as I know, of a cause arising from a marriage other than one celebrated according to the rites of the Greek-Orthodox Church. And there are no Catholic tribunals that I know of, in this country, which will take cognizance of the present cause.

The only courts established by a Communal Law under article 160 of the Constitution, as far as I am aware, are the Greek Communal Courts ; and the Turkish Family Courts. This case being clearly outside the latter, it remains to see whether it is cognizable by the former.

The Greek Communal Courts established under Law No. 9 of 1962, of the Greek Communal Chamber, published in the Official Gazette No. 155 of the 20th May, 1962, are competent to deal with matters pertaining to the personal status of members of the Greek Community in the Republic, within the definition of that term in section 2(1) of the Law.

I need not repeat here, the definition of “personal status” “προσωπικός θεσμός” in section 2(1). It is sufficient to say

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that the definition expressly exempts all matters (θέματα) governed by the Canon Law of the Greek-Orthodox Church, as provided in article 111 of the Constitution ; or of the Church of any religious group which opted for the Greek Community under article 2 of the Constitution.

And article 111 of the Constitution expressly provides that "..... any matter relating to..... marriage, divorce,..... of members of the Greek-Orthodox Church or of a religious group to which the provisions of paragraph 3 of article 2..... apply, shall.... ..be governed by the law of the Greek-Orthodox Church or of the Church of such religious group, as the case may be....."

Here we have it from the petition, and from the evidence adduced in support, that the petitioner is a member of the Greek-Orthodox Church ; and the respondent a member of the Roman Catholic Church. And I can take judicial notice, I think, of the notorious fact that the Roman Catholic Community in the Republic, is a religious group which opted for the Greek Community under article 2 of the Constitution.

It is, therefore, clear, in my view, that the Greek Communal Courts have no competence to deal with the present cause.

Falling, as it does, outside the saving lines of section 19(b) of the present Courts of Justice Law (14 of 1960), the petition remains within the exclusive original jurisdiction of this Court, in the exercise of the powers which before Independence Day vested in, and were exercisable by the Supreme Court of Cyprus under the provisions of sections 20(b) and 33(2) of Chapter 8.

The petitioner's prayer is for dissolution of her marriage on the ground of persistent cruelty on the part of her husband, the respondent herein. The parties were married more than eighteen years ago. And they, both, have had their permanent place of residence within the jurisdiction since November, 1954, that is for the last eight years. They are now, as far as the evidence goes, both living and working in this country.

The cruelty complained of, as stated earlier in this judgment, consists of violent treatment and beating, occasionally in the presence of the parties' children, inside the house, and on at least two occasions in a public street, in the presence

of other persons ; moreover excessive drinking often connected with violent treatment as above. This cruelty on the part of the respondent has been going on for years now ; and injuriously affects, I have no doubt, the health of the petitioner. The indications from the evidence, and the probabilities resulting therefrom are that it shall continue in the future. It has caused eventually the separation of the parties for over a year now.

I take the view that such conduct on the part of the respondent entitles the petitioner to the remedy in the prayer, under the provisions of section 1(1) (c) of the Matrimonial Causes Act, 1950, as amended and in force on the 16th August, 1960, which is the law applicable in the Matrimonial Jurisdiction of this Court, to the case in hand.

There will, therefore, be a decree nisi for the dissolution of the marriage between the parties, celebrated at Alexandria, Egypt, on the fourth day of November, 1944, on the ground of persistent cruelty on the part of the respondent, over a period of more than three years before the presentation of the petition. With costs to be taxed against the respondent, excepting for the costs of the amendment of the names in the title of the petition, as directed on the 30.6.62, which shall be borne by petitioner's advocate.

Application for decree absolute may be made after three months from to-day.

*Decree nisi granted.*

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