This is the rule laid down by the English authorities. In *Ex parte Vaughan* (1866) L.R., 2, Q.B., 116, Cockburn, C.J., said, " where the title to property comes into question, no doubt the jurisdiction of justices is ousted, but that doctrine cannot apply to cases where the title is an essential element in the enquiry which the justices have to determine." So also in *R.* v. *Young*, 52 L.J., M.C., 55, where an Act gave the Magistrates jurisdiction over the offence of " throwing or laying down stones, iron, etc., or other materials in a street," and the Defendant maintained that the spot on which certain iron had been laid down was his private property, it was held that the jurisdiction of the Magistrates was not ousted as the Act gave them power to determine what was a street.

Under this article of the Penal Code the Magistrate was bound to enquire whether the place in dispute was a public square, and if a claim was set up that it is private property he was bound to enquire into the title.

There may be cases in which a Magistrate, exercising a criminal jurisdiction, would not have power to enquire into a question of title, but this is not one of those cases.

BERTRAM, J., concurred.

Appeal dismissed.

[TYSER, C.J. AND BERTRAM, J.]

HAJI AHMED ABDULLAH

v.

EMINE HASSAN AND OTHERS.

JURISDICTION OF SHERI COURT—" RELIGIOUS MATTER "—MARRIAGE—" AGHIRLIK "—CONVENTION OF 4TH JUNE, 1878—COURTS OF JUSTICE ORDER IN COUNCIL, 1882, ART. 20.

The Sheri Court has exclusive jurisdiction to enquire into an action between Moslems in which the status acquired by the parties by virtue of marriage and their mutual rights and obligations arising out of that status come directly in issue.

The District Court is not given jurisdiction merely because the claim involves the payment of a sum of money.

The jurisdiction of the District Court is not however ousted in cases in which such questions only arise incidentally.

The Plaintiff sued the Defendant demanding the return of a sum alleged to have been paid to her as " Aghirlik " on the occasion of their marriage on the ground that she had refused to consummate the marriage.

HELD: That the District Court had no jurisdiction to entertain the claim.

In cases involving questions whether of Moslem or Christian religious law, it is desirable that the Moslem or Christian Ordinary Judge, as the case may be, should be a member of the District Court.

This was an appeal from the District Court of Nicosia. The tribunal being composed of the President and Mitzis, J.

TYSER, C.J. & BERTRAM, J.

HAJI AHMED ABDULLAH *v.* EMINE HASSAN AND OTHERS

The principal claim in the action was for the return of a sum of £44 18*s.* 1½*cp.* paid by the Plaintiff to the Defendant as " Aghirlik " on their marriage on the ground of the wife's refusal to consummate the marriage.

The District Court refused to entertain the claim on the ground that it was a " religious matter " within the meaning of the Convention of 1878, and the Courts of Justice Order in Council, 1882, Sec. 20.

The Plaintiff appealed.

Kyriakides for the Appellant. This is not a " religious matter." It is a claim for the return of a sum of money, originating out of a religious matter, and as such within the jurisdiction of the District Court.

Jemal Effendi for the Respondent.

The Court dismissed the Appeal.

Judgment. THE CHIEF JUSTICE: The ground on which the " Aghirlik " (اغرلق) is sought to be recovered is that in consequence of non-consummation after " Nikah " (نكاح) the marriage was not complete, and that therefore the " Aghirlik " (اغرلق) was recoverable.

The Defendant says, firstly that there was in fact consummation and secondly that as a matter of law even without consummation the status of husband and wife was fully established, and the " Aghirlik " was not recoverable.

The latter question is entirely one of marriage law, which it is for the Sher' Court to decide.

I say nothing as to the jurisdiction of this Court to try disputes as to matters arising between the parties of a civil nature arising out of the marital relations established according to the Sher' Law.

This is a question whether or not the Defendant has acquired the full status of a wife, and in what way the " Aghirlik," a sum payable under the Sher' Law, in respect of marriage is to be dealt with. I am clearly of opinion that these are matters for the Sher' Court.

There may be questions, as for example questions of inheritance to lands, where it may be necessary for the Court to enquire incidentally into questions of marriage law, but this is purely a question of the status of the parties under the marriage law.

The appeal must accordingly be dismissed with costs.

BERTRAM, J.: I cannot help regretting the way in which the District Court was constituted for the trial of this case. I quite appreciate the difficulties that are occasioned by the pressure of the work of the District Court of Nicosia, but I think nevertheless that it is desirable that in all cases which involve questions of the religious law whether of Moslems or Christians, the Moslem or Christian Judge, as the case may be, should be a member of the Court.

The point of issue is really covered by authority. *Sabri* v. *Ibrahim* (1902) 6 C.L.R., 1. Mr. Kyriakides seeks to distinguish that case by pleading that the action is merely for the recovery of a sum of money.

This is however a question of marriage. In order to determine it, we have to determine the status of the parties, and the mutual rights and obligations arising out of that status.

By the convention between England and Turkey when England assumed the occupation of the Island, certain questions were reserved for the Moslem Religious Courts and it has always been held that questions of marriage were among those questions. The advantage which the Turkish Government presumably intended to secure for its Moslem subjects by that Convention would be rendered altogether nugatory, if the jurisdiction of the Moslem Religious Courts was ousted merely because the claim of the Plaintiff involved the payment of a sum of money.

I agree that the situation would be otherwise if the case was one in which a "religious matter" only arose incidentally. Here I think it arises directly.

The Chief Justice intimated that he concurred in the observations of Bertram, J., as to the constitution of the Court.

Appeal dismissed.

[TYSER, C.J. AND BERTRAM, J.]

HUSSEIN MUSTAFA

v.

OSMAN ISMAEL.

HAVALE—ASSIGNMENT OF CLAIM—MEJELLE, ARTS. 673-683—AGENCY—REVOCATION OF AUTHORITY.

A havale is a transaction by which one person assumes the obligation of another.

A transaction by which a creditor purports to assign to another person his claim against his debtor is not a havale, nor is such a transaction recognised in Mohammedan law.

If however a creditor agrees to transfer his claim against his debtor to a third person and for the purpose of the recovery of the claim authorises the person to sue in his own name, but subsequently intervenes and prevents the recovery of the money, he may be made to pay damages for breach of contract.

The Plaintiff having a claim against one Dervish and having commenced an action to recover it, was induced by the Defendant to withdraw his action, the Defendant undertaking to transfer to him the proceeds of another action which he had himself commenced against Dervish. The Defendant accordingly instructed his advocate to recover judgment in his own action against Dervish for the benefit of the Plaintiff, but subsequently to judgment, on execution being taken out, intervened and prevented the execution by declaring that his claim was discharged.

HELD: That the transaction was not a havale, but that Plaintiff was entitled to recover damages from the Defendant for breach of contract.

This was an appeal from the District Court of Nicosia.

The Plaintiff was a man who had incurred certain expenses in connection with the defence of three men charged with having committed a murder at Angastina, and brought an action against one of these men, Dervish Arif Salih (then in prison at Nicosia), for his share of these expenses which amounted to £30.