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.

TYSER, C.J. & BERTRAM, J.

HUSSEIN MUSTAFA *v.* OSMAN ISMAEL

Prior to the commencement of this action Dervish had entered into an arrangement with the Defendant under which he gave the Defendant a bond (deyn sened) for £50. Defendant was to recover judgment against Dervish and to register the judgment as a charge against the immovables, and in this way the immovables of Dervish were to be secured against the attacks of his creditors. An action was accordingly commenced on the bond.

Hearing from Plaintiff that he was experiencing difficulties in recovering from Dervish his share of the expenses referred to, Defendant suggested to him to abandon his action against Dervish, and undertook to transfer to him the proceeds of the collusive action which he himself had commenced on the bond, the claim in that action being reduced to £30.

Plaintiff accepted this proposal and Defendant accordingly gave to his advocate, Mr. Kyriakides, a document in the following terms:—

> " I request you in recovering the money claimed in my action No. 575/07 against Dervish Arif Salih, which was brought for £50, to recover only £30 and costs, and to pay the £30 to Hussein Mustafa of Angastina."

Mr. Kyriakides accordingly recovered judgment and took out execution against the immovables of Dervish, but before he could complete it Defendant thought better of the arrangement, and stopped the execution, declaring that the debt had been discharged.

The Plaintiff thereupon sued the Defendant upon the document above cited, describing it as a " havale."

The District Court found that the document itself was not a " havale," but held that taken together with the surrounding facts, it constituted a havale, and gave judgment for the Plaintiff.

The Defendant appealed.

Theodotou for Defendant. This document is not a " havale," nor do the facts constitute a havale. See *Imperial Ottoman Bank* v. *Limbouri* (1897) 4 C.L.R., 48. It may be that there was a breach of contract and that an action for damages would lie for the breach but it is too late to amend the claim.

Kyriakides for the Respondent.

The Court dismissed the appeal.

Judgment. THE CHIEF JUSTICE: It is clear that in this case there was no havale.

There was however a contract by which in consideration that the Plaintiff would refrain from suing Dervish, the Defendant instructed Mr. Kyriakides to sue for the Plaintiff.

The Defendant could not revoke an authority given for a consideration, and if he acts so as to render the authority of no value, he is liable.

When under the agreement the Defendant gave instructions to Mr. Kyriakides, it was an implied term of that agreement that he would do nothing to interfere with the carrying out of those instructions by Mr. Kyriakides.

For breach of that implied term he is liable in damages. The claim however is brought on an alleged havale, and the Defendant is not liable on a havale. The claim must therefore be amended to a claim for breach of contract.

The damages for the breach are in the circumstances of the case the same as what is claimed in the action as originally framed.

The amount could not be recovered without amendment. Therefore we will not give the Plaintiff costs up to amendment. Under the circumstances of this case we cannot award costs to the Defendant.

Subject therefore to the amendment being made in the claim, judgment will be entered for the Plaintiff for the amount claimed without costs.

BERTRAM, J.: This claim is based on a document which is described as a " havale," and the District Court has found that though the document was not itself a " havale," the circumstances constituted a " havale." Both these ideas are however misconceptions.

It has already been clearly explained by this Court that a havale is not a transfer of claim but a transfer of a debt. It is a transaction in which one person assumes the obligation of another. This is made perfectly clear by the account of " havale " which is given in the " Hedaya."

" The transfer of a debt is lawful; because the prophet has said, ' whenever a person transfers his debt upon a rich man, and the creditor assents to the same, then let the claim be made upon the rich man '; and also because the person upon whom the debt is transferred undertakes a thing which he is capable of performing."

The difference between this case and a case of " havale " is the difference between *cessio* and *novatio* in Roman law.

" Novatio " is the extinction of an obligation by the creation of a new obligation replacing it. Sometimes its object is to effect a change of creditors, as where it is agreed that a debt owed *to* one person shall be paid to another. At other times its object is to effect a change of debtors, as where it is agreed that a debt owed *by* one person shall be paid by another. It is the latter case only, the change of debtors, that (roughly speaking) corresponds to the *havale* in Mohammedan law.

" Cessio " on the other hand is where a creditor assigns his claim against his debtor to another person, and thereby vests his right of suit in that person. This is what in substance the parties were attempting to do in this instance, but it is not a transaction recognised by Mohammedan law.

The only event in which this judgment could have been supported would have been, if the Defendant Osman had undertaken to be personally responsible to the Plaintiff for the £30, which the Plaintiff was claiming from Dervish. But it is clear that he never intended to assume any personal obligation. His intention simply was to assign to the Plaintiff his own claim against Dervish.

The action is therefore misconceived. It should have been brought for a breach of contract, and as in order to put the claim in order an amendment will be necessary, I agree that the appeal must be dismissed without costs.

Appeal dismissed.