HARRIS KAPRIELIAN,

Petitioner,

v.

CONSTANTIA HARRIS KAPRIELIAN then CONSTANTIA DEMETRIADOU,

Respondent.

(*Matrimonial Petition No.* 9/62).

Matrimonial Causes—Jurisdiction of the High Court—Divorce—Mixed civil marriage celebrated in 1957 *by a Marriage Officer in Cyprus under the provisions of the Marriage Law, Cap.* 116 (*now Cap.* 279)—*Husband, an Armenian domiciled in Cyprus and a member of the Armenian Apostolic Church—Wife, a Greek Cypriot and a member of the Greek Orthodox Church of Cyprus—The said marriage is a valid one under the civil law of Cyprus—And the status of the parties as legally married persons is not in any way affected by the fact that subsequently to the aforesaid civil marriage they went through a marriage ceremony in the Armenian Church—And the dissolution of the said civil marriage is a matter outside the view of Articles* 111 *and* 160 *of the Constitution—And within the exclusive original jurisdiction of the High Court under section* 19 (*b*) *of the Courts of Justice Law,* 1960 (*Law of the Republic* No. 14/60)—*Therefore the said civil marriage can only be dissolved by decree of the High Court to the exclusion of any Church tribunal referred to in Article* 111, *paragraph* 1, *of the Constitution or any court established by Communal Law under Article* 160 *of the Constitution—And the instant case has to be decided in accordance with English law as it stood on the day preceding "Independence Day"* i.e. *on the* 15*th August,* 1960—*Section* 29 (2) (*b*) *of the Courts of Justice Law,* 1960 (supra) *and sections* 20 (*b*) *and* 33 (2) *of the Courts of Justice Law, Cap.* 8.

Matrimonial Causes—Territorial jurisdiction of the High Court—Domicil of the petitioner—Domicil of origin in Turkey—Whether petitioner acquired a domicil of choice in Cyprus.

Matrimonial Causes—Divorce—Desertion exceeding three years—Desertion without reasonable cause.

The petitioner (husband) was born in Turkey in 1924, lived there until 1933 when he emigrated with his parents to Cyprus. Ever since 1933 he has lived in Cyprus and he has not visited

Turkey and he considers Cyprus as his permanent home. Neither he nor his parents own any property in Turkey and the petitioner runs a gift shop in Nicosia. He is a British subject by naturalization having acquired this nationality prior to Independence Day (i.e. prior to the 16th August, 1960) by virtue of his residence in Cyprus.

The petitioner-husband is an Armenian and a member of the Armenian Apostolic Church. The respondent-wife is a Greek Cypriot lady and a member of the Greek Orthodox Church of Cyprus. The parties were duly married at the District Commissioner's Office, Nicosia, on the 25th January, 1957, under the provisions of the Marriage Law, Cap. 116 (now Cap. 279). Later on (in May 1957) they went through a religious ceremony of marriage in the Armenian Church, Nicosia, but no religious ceremony was ever held in the Greek-Orthodox Church. About two years after the civil marriage, the respondent (wife) left the matrimonial home and went to live with her mother. The petitioner (husband) asked her to return, but she refused. Repeated requests on his behalf to the respondent to resume co-habitation were unsuccessful. Hence this petition by the husband for the dissolution of the civil marriage on the ground of desertion by his wife exceeding three years.

On those facts, the first question which arose for determination was whether the High Court in its original matrimonial jurisdiction under section 19 (*b*) of the Courts of Justice Law, 1960 (Law of the Republic No. 14/60) could take cognizance of the cause in view of the provisions of Articles 111 and 160 of the Constitution.

Article 111, paragraph 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."

It is to be noted that Armenians in Cyprus constitute a "religious group" within the meaning of the expression in Article 111, paragraph 1, just quoted. It is also plain that in view of the provisions of the same Article 111, paragraph 1, the present petition is not one of those cases which could be entertained by a Communal Court established under Article 160 of the Constitution. (By paragraph 1 of that Article 160 it is provided that "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).

Under the provisions of section 19 (*b*) of the Courts of Justice Law, 1960 (*supra*), the High Court has exclusive original jurisdiction to hear matrimonial causes which were before Independence day heard and determined by the Supreme Court of Cyprus under the Courts of Justice Law, Cap. 8 (now repealed), save where a matrimonial cause is, under Article 111 of the Constitution (*supra*), cognizable by a tribunal of a Church or by a Court established by Communal Law under Article 160 of the Constitution. There is no doubt that the former Supreme Court of the Colony of Cyprus would have jurisdiction to entertain the present petition on the day preceding "Independence Day". (See section 20 (*b*) of the Courts of Justice Law, Cap. 8, then in force.) The question, therefore, which has to be considered now is whether the provisions of Article 111 of the Constitution (*supra*) take the instant case out of the jurisdiction of the High Court conferred by section 19 (*b*) of the aforesaid new Courts of Justice Law, 1960 (*supra*).

On the other hand by section 29 (2) (*b*) of the latter statute it is provided that the High Court in exercise of its matrimonial jurisdiction under section 19 (*b*) thereof (*supra*) "Shall apply the Law relating to matrimonial causes which was applied by the Supreme Court of Cyprus on the day preceding 'Independence Day' (i.e. on the 15th August 1960); and the Supreme Court of the Colony of Cyprus on that day, in the exercise of its original jurisdiction in matrimonial causes under section 20 (*b*) of the Courts of Justice Law, Cap. 8 (*supra*) applied, by virtue of section 33 (2) of that Law, "the law relating to Matrimonial causes for the time being administered by the High Court of Justice in England".

Held, (1) *on the question whether the instant case is cognizable by the High Court in view of the provisions of Articles* 111 *and* 160 *of the Constitution :*

(1) In view of the provisions of Article 111 of the Constitution this is not one of those cases which could be tried by a Communal Court established under Article 160 of the Constitution. Furthermore, there is no doubt that the former Supreme Court of Cyprus would have jurisdiction to entertain the present petition prior to " Independence Day ".

(2) The Marriage Law, Cap. 116 (now Cap. 279) provided that whenever any person desired to contract a mixed marriage in Cyprus (except with a Turk of the Moslem faith), each of the parties to the intended marriage should give notice to a Marriage Officer of the District wherein such party had his or her abode, and after the expiration of a certain time limit and the publication of the banns by the Marriage Officer a certificate was issued by him to the interested parties (sections 6, 8, 34 and 36 of old Cap. 116 now Cap. 279). On the issue of such a certificate the parties could choose to be married either by a Registered Minister according to the rites and ceremonies of marriage observed by the Church, denomination or body to which such minister belonged, or by any Marriage Officer at his office, that is to say, at the District Commissioner's Office.

(3) The parties in the present case, having complied with these formalities, chose to have their marriage solemnized by a Marriage Officer (and *not* by a Registered Minister) on the 25th January, 1957, as the certificate of marriage shows.

(4) Consequently, when the parties were married by the Marriage Officer they became legally married to each other for all purposes of the Civil Law and with the consequence that their marriage could not be dissolved during their life time except by a valid judgment of divorce and that if either of them (before the death of the other) shall contract another marriage while their marriage remained undissolved he or she will be guilty of bigamy and liable to be punished. It, therefore, follows that, as was said by my brother Vassiliades J., *in Mantovani* v. *Mantovani* 1962 C.L.R. 336 at p. 340, " the parties left the Commissioner's Office a legally married couple, each acquiring the status of a married person ". And the fact that they went through a religious ceremony in the Armenian Church some 3½ months later did not in any way alter their status one way or the other.

(5) In the present case we are concerned with the dissolution of the marriage celebrated at the Commissioner's Office on the 25th January, 1957, in accordance with the provisions of the Marriage Law, and not with the religious ceremony which was solemnized in May, 1957. In these circumstances can it be said that this matter (*a*) is governed by the law of the Greek-Orthodox Church or the Armenian Church, and (*b*) that it is cognizable by a tribunal of either of those churches ?

(6) So far as the Greek-Orthodox Church is concerned, in any event, the religious ceremony was not celebrated in that Church and the law of the Greek-Orthodox Church cannot possibly govern this matter nor is such matter cognizable by a tribunal of that Church. In so far as the Armenian Church is concerned, even if a tribunal of that Church is empowered to dissolve the religious marriage of the parties solemnized in May, 1957, it cannot possibly dissolve the marriage of the parties celebrated by a Marriage Officer in January 1957, at the Commissioner's Office. Having regard to the relevant statutory and constitutional provisions, I am of the view that the aforesaid marriage of the parties celebrated in January, 1957, which is the subject of the present petition, can only be dissolved by a valid judgment of divorce by a civil court of competent jurisdiction.

(7) For these reasons I hold that this cause is not cognizable by a tribunal of a Church under the provisions of Article 111 of the Constitution, and that this Court is the only Court which has exclusive jurisdiction to hear and determine the present case under the provisions of section 19 (*b*) of the Courts of Justice Law, 1960.

Held, (II) *regarding the question whether the petitioner (husband) is domiciled in Cyprus :*

(1) The petitioner was born of Armenian parents on the 1st January, 1924, in Turkey where he lived with his parents until 1933 when the whole family emigrated to Cyprus. Neither he nor his parents own any property in Turkey and the petitioner runs a gift shop at Kolokoshi Military Camp in Nicosia. He is a British subject by naturalization having acquired this nationality prior to Independence Day by virtue of his residence in Cyprus. Ever since 1933 he has lived in Cyprus and he has not visited Turkey and he considers Cyprus as his permanent home.

1962
Dec. 3, 17
1963
April 9

HARRIS KAPRIELIAN
v.
CONSTANTIA HARRIS KAPRIELIAN
THEN
CONSTANTIA DEMETRIADOU

(2) On these facts I am satisfied that the petitioner is domiciled in Cyprus and this confers jurisdiction on this Court to hear the present petition.

Held, (III) *as to the question whether the charge of desertion has been proved :*

(1) Two witnesses corroborated the petitioner's evidence. His evidence was to the effect that about two years after their marriage, i.e. on the 20th February, 1959, he returned home one day to find that his wife had gone. He looked for her and found her in her mother's house some two or three hours later. He asked her to return home but she refused saying " I do not want you and I do not need you any more. I am in good employment now ". She was then and still is employed in the Government Service as a stenographer. Two or three days after the 20th February, 1959, the petitioner went with a friend of his (witness No. 2) and asked the respondent again to return home but she refused. Some 6 or 7 months later, viz. in summer of 1959, at the petitioner's request, his cousin (witness 3) spoke to the respondent in this connection. Some two or three days later the petitioner saw the respondent, personally, and requested her again to return but without success, and ever since February, 1959, she has been away from the matrimonial home. Witnesses No. 2 and 3 for the petitioner gave evidence supporting that of the petitioner.

(2) It would seem that their differences were of a financial nature and the evidence shows that the petitioner was losing money on his business and that the respondent was not prepared to help him out of his difficulties in any way.

(3) On the evidence before me I am satisfied beyond reasonable doubt that the respondent deserted the petitioner without any reasonable cause for a period exceeding three years and that the petitioner is entitled to a divorce nisi on the ground of desertion.

Order for divorce nisi.
No Order as to costs.

Cases referred to :

Mantovani v. *Mantovani*, 1962 C.L.R. 336 at p. 340, *followed.*

Matrimonial Petition.

Petition for dissolution of marriage because of the wife's desertion.

E. Emilianides for the Petitioner.

Respondent absent, duly served.

Cur. adv. vult.

The facts sufficiently appear in the judgment delivered by :—

JOSEPHIDES, J. : This is an undefended husband's petition for divorce on the ground of desertion.

The petitioner is an Armenian and a member of the Armenian Apostolic Church in Cyprus and the respondent is a Greek Cypriot and a member of the Greek-Orthodox Church of Cyprus.

The parties were married at the Commissioner's Office, Nicosia, on the 25th January, 1957 by a Marriage Officer, under the provisions of the Marriage Law, Cap. 116 (now Cap. 279). Some 3½ months later, i.e. on the 12th May, 1957, the parties went through a religious ceremony in the Armenian Church in Nicosia. There was no religious ceremony in the Greek-Orthodox Church.

The first question which falls to be determined is whether this Court has jurisdiction to hear the present petition.

Under the provisions of section 19 (*b*) of the Courts of Justice Law, 1960, the High Court has exclusive original jurisdiction to hear matrimonial causes which were before Independence Day heard and determined by the Supreme Court of Cyprus under the Courts of Justice Law, Cap. 8 (now repealed), 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 Communal Law under Article 160 of the Constitution.

In view of the provisions of Article 111 of the Constitution this is not one of those cases which could be tried by a Communal Court established under Article 160 of the Constitution. Furthermore, there is no doubt that the former Supreme Court of Cyprus would have jurisdiction to entertain the present petition prior to Independence Day. Consequently, what we have now to consider is the effect of the provisions of Article 111 of the Constitution on the Statute Law of Cyprus obtaining on Independence Day.

Article 111, paragraph 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."

If I may summarise the provisions of this Article, so far as one is permitted to summarise these provisions for the purposes of this case, matters of divorce of members of the Greek-Orthodox Church or of the Armenian Church are—

(*a*) governed by the law of the Greek-Orthodox Church or of the Armenian Church ; and

(*b*) cognizable by a tribunal of such Church.

For the purpose of considering this question it is necessary to examine what was the state of the law with regard to marriage at the time of the celebration of the marriage of the parties in 1957. The Marriage Law, Cap. 116 (now Cap. 279) provided that whenever any person desired to contract a mixed marriage in Cyprus (except with a Turk of the Moslem faith), each of the parties to the intended marriage should give notice to a Marriage Officer of the District wherein such party had his or her abode, and after the expiration of a certain time limit and the publication of the banns by the Marriage Officer a certificate was issued by him to the interested parties (sections 6, 8, 34 and 36 of old Cap. 116 now Cap. 279). On the issue of such a certificate the parties could choose to be married either by a Registered Minister according to the rites and ceremonies of Marriage observed by the Church, denomination or body to which such minister belonged, or by any Marriage Officer at his office, that is to say, at the District Commissioner's Office. But section 16 provided that no Marriage Officer or Registered Minister could celebrate any such marriage before the certificate of a Marriage Officer or the Governor's special licence (provided for by that Law) had first been obtained and produced to him.

The parties in the present case, having complied with these formalities, chose to have their marriage solemnized by a Marriage Officer (and *not* by a Registered Minister) on the 25th January, 1957, as the certificate of marriage

shows. The form of celebration of marriage by a Marriage Officer, under the provisions of section 17 of the Marriage Law, is as follows, that is to say, the Marriage Officer addressed the parties in the following words :

> " Know ye, A.B. and C.D., that by the public taking of each other as man and wife in my presence, and in the presence of the persons now here, and by the subsequent attestation thereof by signing your names to that effect, you become legally married to each other for all purposes of the Civil Law, and know ye further, that this marriage cannot be dissolved during your life-time except by a valid judgment of divorce, and that if either of you (before the death of the other) shall contract another marriage while this remains undissolved, you will thereby be guilty of bigamy, and be liable to the punishment inflicted for that offence ; " and each of the parties shall then say to the other—' I call upon all persons here present to witness that I, A.B., do take thee, C.D. to be my lawful wife (or husband) '."

Consequently, when the parties were married by the Marriage Officer they became legally married to each other for all purposes of the Civil Law and with the consequence that their marriage could not be dissolved during their lifetime except by a valid judgment of divorce and that if either of them (before the death of the other) shall contract another marriage while their marriage remained undissolved he or she will be guilty of bigamy and liable to be punished. It, therefore, follows that, as was said by my brother Vassiliades J., in *Mantovani* v. *Mantovani*, 1962 C.L.R. 336 at p. 340 : " the parties left the Commissioner's Office a legally married couple, each acquiring the status of a married person ". And the fact that they went through a religious ceremony in the Armenian Church some 3 1/2 months later did not in any way alter their status, one way or the other.

In the present case we are concerned with the dissolution of the marriage celebrated at the Commissioner's Office on the 25th January, 1957, in accordance with the provisions of the Marriage Law, and not with the religious ceremony which was solemnized in May, 1957. In these circumstances can it be said that this matter (*a*) is governed by the law of the Greek-Orthodox Church or the Armenian Church, and (*b*) that it is cognizable by a tribunal of either of those churches ?

So far as the Greek-Orthodox Church is concerned, in any event, the religious ceremony was not celebrated in that Church and the law of the Greek-Orthodox Church cannot possibly govern this matter nor is such matter cognizable by a tribunal of that Church. In so far as the Armenian Church is concerned, even if a tribunal of that Church is empowered to dissolve the religious marriage of the parties solemnized in May, 1957, it cannot possibly dissolve the marriage of the parties celebrated by a Marriage Officer in January, 1957 at the Commissioner's Office. Having regard to the relevant statutory and constitutional provisions, I am of the view that the aforesaid marriage of the parties celebrated in January, 1957, which is the subject of the present petition, can only be dissolved by a valid judgment of divorce by a civil Court of competent jurisdiction.

For these reasons I hold that this cause is not cognizable by a tribunal of a Church under the provisions of Article 111 of the Constitution, and that this Court is the only Court which has exclusive jurisdiction to hear and determine the present case under the provisions of section 19 (*b*) of the Courts of Justice Law, 1960.

Two more questions remain to be determined, namely—

(1) whether the petitioner (husband) is domiciled in Cyprus ; and

(2) whether the charge of desertion has been proved.

As to question (1), the petitioner was born of Armenian parents on the 1st January, 1924 in Turkey where he lived with his parents until 1933 when the whole family emigrated to Cyprus. Neither he nor his parents own any property in Turkey and the petitioner runs a gift shop at Kolokoshi Military Camp in Nicosia. He is a British subject by naturalization having acquired this nationality prior to Independence Day by virtue of his residence in Cyprus. Ever since 1933 he has lived in Cyprus and he has not visited Turkey and he considers Cyprus as his permanent home.

On these facts I am satisfied that the petitioner is domiciled in Cyprus and this confers jurisdiction on this Court to hear the present petition.

On the *second question*, i.e. that of desertion, two witnesses corroborated the petitioner's evidence. His evidence was to the effect that about two years after their

marriage, i.e. on the 20th February, 1959, he returned home one day to find that his wife had gone. He looked for her and found her in her mother's house some two or three hours later. He asked her to return home but she refused saying " I do not want you and I do not need you any more. I am in good employment now ". She was then and still is employed in the Government Service as a stenographer. Two or three days after the 20th February, 1959, the petitioner went with a friend of his (witness No. 2) and asked the respondent again to return home but she refused. Some 6 or 7 months later, viz. in summer of 1959, at the petitioner's request, his cousin (witness 3) spoke to the respondent in this connection. Some two or three days later the petitioner saw the respondent, personally, and requested her again to return but without success, and ever since February, 1959, she has been away from the matrimonial home. Witnesses No. 2 and 3 for the petitioner gave evidence supporting that of the petitioner.

It would seem that their differences were of a financial nature and the evidence shows that the petitioner was losing money on his business and that the respondent was not prepared to help him out of his difficulties in any way.

On the evidence before me I am satisfied beyond reasonable doubt that the respondent deserted the petitioner without any reasonable cause for a period exceeding three years and that the petitioner is entitled to a divorce nisi on the ground of desertion.

Mr. Emilianides claims no costs.

Order for divorce nisi.
No order as to costs.