VARVARA ANTONIOU JOSEPH HJIJOVANNI
(OTHERWISE PARTELLA),

Petitioner,

v.

ANTONIOS JOSEPH HJIJOVANNI,

Respondent.

(*Matrimonial Petition No.* 18/67).

Matrimonial Causes—Jurisdiction—Petition by wife for nullity of marriage—Both parties domiciled in Cyprus and members of the Maronite Church—Civil marriage solemnised in 1966 *at the register office in Enfield, London, England—No religious marriage celebrated—Wife a citizen of the Republic of Cyprus—Husband a British national (citizen of the United Kingdom and Colonies)—If only English law was applicable to the present case (see sections* 19(b) *and* 29(2)(b) *of the Courts of Justice Law,* 1960) *the Court would certainly have jurisdiction to entertain the present suit—Position not affected by the provisions of Article* 111.1 *of the Constitution—Because the present matrimonial cause is not cognisable by the Ecclesiastical Tribunal of the Maronite Church—It follows that the Court has under section* 19(b) *of the aforesaid Law exclusive original jurisdiction to hear and determine the suit:* Jasonos *v.* Jasonos (*Matrimonial Petition No.* 14/1961, *decided on March,* 2, 1962, *unreported and* Christodoulou *v.* Christodoulou 1962 *C.L.R.* 68, followed—*But there is an additional reason why the jurisdiction of the Court in the present case is not affected by the provisions of Article* 111.1 *of the Constitution—This Article read in conjunction with Article* 2(3) *of the constitution should be construed as being applicable to citizens of the Republic only—That is to say, where both parties to the cause are citizens of the Republic—Consequently as in the present case the husband is a British national, the provisions of Article* 111.1 *of the Constitution do not apply—And this Court has jurisdiction to entertain the present nullity proceedings—See also herebelow.*

Private International Law—Personal status—Husband and wife—Validity of marriage—Formal and essential validity of marriage—

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Lex loci celebrationis—*Personal law of the parties—The Civil marriage between the parties to the present cause—The question of its validity—But for the provisions of Article* 111.1 *of the Constitution the law applicable in matrimonial causes before this Court, under the provisions of section* 29(1)(c) *and* 2(b) *of the Courts of Justice Law,* 1960 (supra) *would be the English principles of private international law which form part of the common law—Formal validity under that law depends solely upon the* lex loci celebrationis; *and essential validity is a matter of the personal law of the parties—Now, in the present case concerning members of the Maronite Church, the religious ceremony (and there was none in the instant case) is not considered as a form of marriage only but as a condition of the essential validity of the marriage—And without which religious ceremony the marriage is considered as void and non-existent—On the other hand, the civil marriage solemnised between the parties in the present case at a register office in England* (supra) *is considered as valid in England—As the English Courts would consider the provision that the marriage ceremony did not comply with the canon law of the Maronite Church as offending intolerably against the concept of justice prevailing in the English Courts and should not be accorded recognition—The position is not affected in the least by the provisions of Article* 111.1 *of the Constitution—Because, for the reasons already explained, this Article is not applicable to the present case* (supra)—*Consequently the civil marriage of the parties in this cause is not governed by the canon law of the Maronite Church but by English law—And by that law the said civil marriage is a valid one; therefore, in view of the provisions of the Courts of Justice Law,* 1960 (supra), *such marriage must be held by this Court to be a valid one in Cyprus too—See also herebelow.*

Constitutional Law—'Religious groups'—Articles 2.3 *and* 111.1 *of the Constitution—Members of the Maronite Church in Cyprus recognised as a 'religious group' within the meaning of Article* 2.3 *referred to, also, in Article* 111.1 *of the Constitution.*

Constitutional Law—Article 111.1 *of the Constitution—Question of its extraterritorial application left open—See also hereabove and herebelow.*

Constitutional law and Family Law—Article 111.1 *of the Constitution—Meaning, scope and effect—Article* 111.1 *presumably intended to continue substantially the application of the existing provisions regarding personal status which adopted the principles*

of Ottoman law prevailing in Cyprus (see Parapano *v.* Happaz (1894) 3 *C.L.R.* 69, *P.C); and the provisions of section* 34 *of the Courts of Justice Law, Cap.* 8, *originally enacted in* 1935—*Also intended to take out of the competence of the Communal chambers the matters of family status specified therein (i.e. Article* 111.1), *and to preserve, and not to extend, the existing competence of the ecclesiastical tribunals—In any event Article* 111.1 *read in conjunction with Article* 2.3 *of the Constitution must be construed as being applicable to citizens of the Republic only, that is to say, where both parties to the cause are citizens of the Republic—Consequently, as in the present case the husband is a British national* (supra) *neither the validity of the said civil marriage nor the jurisdiction of this Court to try the suit is affected by the provisions of Article* 111.1 *of the Constitution—See also hereabove and herebelow.*

Constitutional Law and Family Law—Article 111.1 *of the Constitution and the problem of limping marriages which are inherently liable to cause hardship and injustice—See also hereabove.*

Matrimonial Causes—Nullity proceedings—Petition by wife for nullity of marriage on the ground of the husband's wilful refusal to consummate the marriage—Cross-prayer by husband for nullity of the marriage on the ground of the wife's wilful refusal to consummate the marriage—Civil marriage—Prior agreement of parties that they would go through a religious ceremony of marriage—Parties being professed members of the Maronite Church well knew that consummation could only follow after the religious ceremony—Husband's requests for a religious marriage persistently refused by the wife without any reasonable or just cause—Such requests for a religious ceremony on the part of the husband include in the circumstances an implied request for intercourse and to live wholly as a man and wife—On the other hand, by her refusal to proceed with the religious ceremony, the wife made it impossible for the husband, with a good conscience, to live with her as her husband—And her refusal is in the present case a reasonable and just cause for the husband to refuse intercourse, even if it had been requested—Therefore, the wife is guilty of wilful refusal to consummate the marriage as she has refused to go through a religious ceremony as it was agreed and intended by both parties—Wife's prayer rejected and husband's prayer granted.

Marriage—Civil marriage—Religious marriage—Nullity proceedings on the ground of wilful refusal to consummate the marriage—In

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the circumstances of the present case the wife's persistent refusal to proceed with the religious ceremony amounts to wilful refusal on her part to consummate the marriage—See also immediately above under Matrimonial Causes.

Maronite Church—Members of—Recognised as a 'religious group' within Article 2.3 of the Constitution—Canon law of the Maronite church—Civil marriage—Religious marriage—Religious ceremony not considered as a form of marriage only but as a condition of the essential validity of the marriage without which the marriage is considered as void and non-existent—See also hereabove.

Maronite Church—Ecclesiastical Tribunals of—No Ecclesiastical Tribunal of the Maronite Church having competence to try matrimonial causes of members of that Church holds sittings in Cyprus—Parties have to apply to the Ecclesiastical Tribunal of the Maronite Church sitting in Beirut, Lebanon—Observations by the Court regarding this unsatisfactory position.

"Religious group" within the meaning of Articles 2.3 and 111.1 of the Constitution—See hereabove.

Limping marriages—See above.

Nullity proceedings—See above.

Wilful refusal to consummate the marriage—Persistent refusal to go through the religious ceremony held to amount in the circumstances of the present case to wilful refusal to consummate the marriage—See above.

Consummation of marriage—Refusal to consummate—Nullity proceedings on the ground of wilful refusal to consummate the marriage—See above.

Civil marriage—See above.

Religious marriage—See above.

This case raises complicated questions of private international law of public importance concerning matters of personal status which are expressly provided for under the Constitution of the Republic of Cyprus. The main legal question in this case is once more the interpretation of Article 111.1 of the Constitution (*infra*) which has given considerable difficulty in its application since Independence (i.e. since 16th August, 1960, date of the establishment of the Republic of Cyprus and the

coming into operation of the Constitution). The facts are shortly as follows:-

The parties, who are members of the Maronite Church, were married on the 12th March, 1966, at the register office in Enfield, London, England, but it is common ground that the marriage was never consummated. There was no religious ceremony.

The wife in this case prays that the said marriage be declared null and void owing to the husband's wilful refusal to consummate the marriage. The husband denies wilful refusal to consummate the marriage, he alleges that he has been willing to consummate it and prays nullity on the ground that it has not been consummated owing to the wife's wilful refusal.

The wife was born in Cyprus of Cypriot Maronite parents on the 9th June, 1943; she is a citizen of the Republic of Cyprus and a permanent resident of Cyprus. At the time of her marriage she was domiciled in Cyprus. On the other hand, the husband was born in Cyprus too of Cypriot Maronite parents on the 20th May, 1928. He went to England in January, 1953 where he lived until the 2nd July 1966, when he returned to Cyprus where he has been living ever since. He is domiciled in Cyprus and his national status is described in his British passport issued by the Foreign Office in London as "British subject: Citizen of the United Kingdom and Colonies".

The learned Judge found as a fact that before the parties went through the civil marriage in England they expressly agreed that they would, as professed members of the Maronite Church, go through a religious ceremony; that the wife repeatedly refused the husband's requests to go through the religious marriage which had been agreed upon, both, she and the husband, as professed members of that Church, well knowing that consummation could only follow after such religious ceremony. The learned Judge, accepting the evidence of the Suffragan Bishop of the Maronite Church of Cyprus, made the following findings regarding the canon law of the Maronite Church:

The Maronite Church does not recognise the civil marriage as a valid marriage; it only recognises the religious marriage. Sexual intercourse can only take place after the religious ceremony. No divorce is granted by the Ecclesiastical Tribunal of the Maronite Church but a marriage may be declared null

and void on the ground of non-consummation. No ecclesiastical tribunal of the Maronite Church holds sittings in Cyprus. Members of that church have to apply to the ecclesiastical tribunal sitting in Beirut, Lebanon. The Suffragan Bishop and two other priests in Cyprus take statements from the interested parties which statements are then sent to the ecclesiastical tribunal in Beirut for consideration and determination. Finally, the ecclesiastical tribunal in Beirut has competence to deal only with religious marriages and it is not competent to declare a civil marriage, like the present one, null and void.

But for the provisions of Article 111.1 of the Constitution (*infra*), there can be no doubt that English law would be applicable to the present case (see sections 19(b), 29(1)(c) and 2(b) of the Courts of Justice Law, 1960 (Law of the Republic No. 14 of 1960): see also, the Courts of Justice Law, Cap. 8 section 34).

Section 19(b) of the Courts of Justice Law, 1960 reads:

> "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 including power to make orders for alimony whether *pendente lite* or after judicial separation, maintenance upon a decree of dissolution or of nullity, maintenance of children and periodical payments in suits for restitution of conjugal rights and such other powers as were before Independence Day, vested in or exercisable by the Supreme Court of Cyprus under the Law repealed by this Law."

Section 29(1)(c) of the said Law reads:

"(1) Every Court in the exercise of its civil or criminal jurisdiction shall apply—

> (c) The common law and the doctrines of equity save in so far as other provision has been or shall be made by any law made or becoming applicable under the Constitution or any law saved under paragraph (b) of this section in so far as they are not inconsistent with, or contrary to, the Constitution."

Section 29(2)(b) of the same Law reads:

"(2) (b) The High Court in exercise of the jurisdiction 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".

Article 111.1 of the Constitution reads as follows:

"1. 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."

Paragraph 3 of Article 2 referred to in Article 111.1 (*supra*), with regard to members of a 'religious group', reads as follows:–

"For the purpose of this Constitution.....

(3) Citizens of the Republic who do not come within the provisions of paragraph (1) or (2) of this Article shall, within three months of the date of the coming into operation of this Constitution, opt to belong to either the Greek or the Turkish Community as individuals, but, if they belong to a religious group, shall so opt as a religious group and upon such option they shall be deemed to be members of such Community:

Provided that any citizen of the Republic who belongs to such a religious group may choose not to abide by the option of such group and by a written and signed declaration submitted within one month of the date of such option to the appropriate officer of the Republic and to the Presidents of the Greek and the Turkish Communal Chambers opt to belong to the Community other than that to which such group shall be deemed to belong:

Provided further that if an option of such religious group is not accepted on the ground that its members are below the requisite number any member of such group may within one month of the date of the refusal of acceptance of such option opt in the aforesaid manner as an individual to which Community he would like to belong.

For the purposes of this paragraph a 'religious group' means a group of persons ordinarily resident in Cyprus professing the same religion and either belonging to the same rite or being subject to the same jurisdiction thereof the number of whom, on the date of the coming into operation of this Constitution exceeds one thousand out of which at least five hundred become on such date citizens of the Republic".

It is to be noted that the Maronite Church in Cyprus have been recognised as a religious group within the meaning of the aforesaid Article 2.

On the facts set out hereabove four main questions fall for determination:–

(1) The first question is whether, but for the provisions of Article 111.1 of the constitution (*supra*), the Court has jurisdiction to try this suit. In other words, if only English law was applicable to this case (see sections 19(b) and 29(2)(b) of the Courts of Justice Law, 1960 *supra*) would this Court be the competent tribunal to declare the marriage null and void?

(2) If yes, what is the effect of Article 111.1 of the constitution (*supra*) on the jurisdiction of this Court in the present nullity proceedings?

(3) Was the civil marriage in England a valid marriage having regard to the provisions of Article 111.1 of the Constitution (*supra*)?

(4) Assuming the civil marriage to be a valid one, is either party in the present case entitled to the relief sought?

Held, I: As regards the first question (supra) *i.e. as to whether, but for the provisions of Article* 111.1 *of the Constitution* (supra), *the Court would have jurisdiction to try this suit*:–

(1) In England the Court has jurisdiction to entertain a suit for nullity where, *inter alia*, both parties are domiciled in England at the commencement of the suit.

(2) In the present case the parties are domiciled in Cyprus and, consequently, this Court would have jurisdiction to entertain the present suit if only English law was applicable to the present case under the provisions of the Courts of Justice Law, 1960 (*supra*).

Held, II: As regards the second question (supra) *i.e. as to what is the effect of Article* 111.1 *of the Constitution on the jurisdiction of the Court in these nullity proceedings:*

(1) It would seem that Article 111 of the Constitution (*supra*) contains provisions relating to the substantive law of marriage applicable to a matrimonial suit in which a citizen of the Republic and a member of a religious group recognised under the Constitution is a party, and that it also contains provisions relating to the competence of the Court which is to try such suit.

(2) (a) In Article 111 it is expressly provided that, subject to the provisions of the constitution, any matter relating, *inter alia*, to nullity of marriage of members of a religious group, within the ambit of Article 2.3 of the Constitution (*supra*), shall be governed by the law of the church of such a religious group and "shall be cognizable by a tribunal of such Church."

(b) But the marriage solemnised between the parties in the present case, at a register office in England, being a civil marriage and not a religious one, on the evidence of the Suffragan Bishop of the Maronites, the ecclesiastical tribunal of the Maronite Church sitting in the Lebanon would have no competence to try such a suit of nullity of marriage, as that tribunal has competence to try nullity cases arising out of religious marriages only.

(3) It would, therefore, follow that, as the present matrimonial cause is not cognisable by the ecclesiastical tribunal of the Maronite church, under the provisions of section 19(b) of the Courts of Justice Law, 1960 (*supra*), this Court has exclusive jurisdiction to hear and determine such a case: see *Jasonos* v. *Jasonos* (Matrimonial Petition No 14/61 decided on March 2, 1961, *unreported*) referred to and followed in *Christodoulou* v. *Christodoulou* 1962 C.L.R. 68, at p. 81.

(4) But I think that there is an additional reason why the jurisdiction of this Court in the present case is not affected by the provisions of Article 111 of the Constitution:-

(a) Article 111 was presumably intended to continue substantially the application of the existing provisions, regarding personal status, which adopted the principles of Ottoman law prevailing in Cyprus: see *Parapano* v. *Happaz* (1894) 3 C.L.R. 69, P.C.; and the provisions of section 34 of the Courts of Justice Law, Cap. 8, originally enacted in 1935.

(b) It would also appear that Article 111 was further intended to take out of the competence of the Communal Chambers the matters of family status specified in that Article, and to preserve, and not to extend, the existing competence of the ecclesiastical tribunals: see *Tyllirou* v. *Tylliros* (1962) 3 R.S.C.C. 21, at p. 25, which referred to the competence of the ecclesiastical tribunals of the Greek-Orthodox Church. It should, however, be borne in mind that there was statutory provision until the coming into operation of the Constitution, which recognized as valid a civil marriage between members of the same religious community (apart from members of the Greek-Orthodox Church or persons of the Moslem faith), as well as civil marriages between members of two different religious communities; that the Supreme Court of the Colony of Cyprus had exclusive jurisdiction in matrimonial causes between parties to such marriage.

(c) Considering that Article 111.1 of the Constitution (*supra*) should be read in conjunction with Article 2.3. of the constitution (*supra*) in which express reference is made to "citizens" of the Republic, and having regard to the exclusion of the competence of the Communal Chambers, which, have competence only on citizens of the Republic, I am of the view that Article 111.1 should be construed as being applicable to citizens of the Republic only, that is to say, where both parties to the cause are citizens of the Republic.

(d) Consequently, as in the present case the husband is a British national the provisions of Article 111.1 of the Constitution (*supra*) do not apply and this Court has jurisdiction to hear and determine the suit.

Held, III: As regards the third question (supra) *i.e. as to whether the civil marriage solemnised in England was a valid marriage having regard to the provisions of Article* 111.1 *of the Constitution* (supra):

(1) Article 111.1 of the Constitution (*supra*) provides that any matter relating to the marriage of members of any re-

ligious group (as defined in Article 2.3 *supra*) shall be governed by the law of the Church of such religious group. The question which arises for determination in the present case is whether such a provision has extra-territorial application that is to say, whether members of such religious group cannot be married at a civil registry in any part of the world and that the only valid marriage, wherever they may happen to be, has to be solemnised in the church.

(2) But for the provisions of Article 111 (*supra*) the law applicable in matrimonial causes before this Court, under the provisions of section 29(1)(c) and 2(b) of the Courts of Justice Law, 1960, (*supra*) would be the English principles of private international law which form part of the common law. Formal validity of a marriage under that law, depends solely upon the *lex loci celebrationis;* and essential validity is a matter of the personal law of the parties (Cheshire's Private International Law, seventh edition, page 289). Capacity to marry is governed by the law of each party's antenuptial domicile (Dicey and Morris, The Conflict of Laws, eighth edition, page 254, rule 31).

(3) Now, according to the evidence of the Maronite Suffragan Bishop, in the present case, the religious ceremony is not considered as a form of marriage only but as a condition of the essential validity of the marriage without which the marriage is considered as void and non-existent. On the other hand, there is no doubt that the civil marriage solemnised between the parties in the present case at a register office in England is considered as valid in England as the English Courts would consider the provision that the marriage ceremony did not comply with canon law as offending intolerably against the concept of justice prevailing in the English Courts and should not be accorded recognition (*Lepre* v. *Lepre* [1965] P. 52).

(4) If we accepted the argument that, so long as the religious ceremony related to the essential validity of marriage by virtue of the provisions of Article 111.1 (*supra*), the principle of *locus regit actum* cannot apply, and that marriage of citizens of the Republic who belong to a church of a religious group, whenever solemnised, would be void if not solemnised in accordance with the rites of that church, the result would be that the marriage contracted in England by the parties in the present case would be considered as valid in England and void in Cyprus. Attention has recently been called to the problem

of marriages which are valid in one country and not valid in other countries. They institute one type of limping marriages which are themselves inherently liable to cause hardship and injustice.

(5) According to English law, which would be applicable but for the provisions of Article 111.1 (*supra*) "the personal law of a party which governs his capacity to marry must not offend against English public policy. Thus English law does not recognise a disability to marry, imposed by foreign law, of a religious or penal character" (Rayden on Divorce, tenth edition, page 103, paragraph 19; see also *Papadopoulos* v. *Papadopoulos* [1930] P. 55, particularly at p. 64 per Lord Merrivale P.; and *Gray* (*orse. Formosa*) v. *Formosa* [1963] P. 259; see, also, *Lepre* v. *Lepre* (*supra*) at pp. 64 and 65, per Sir Jocelyn Simon P.).

(6) In the present case, however, it is not necessary to decide the question of the extra-territorial application of Article 111.1 of the Constitution (*supra*) as it has been submitted that one of the parties (the husband) is not a citizen of Cyprus and that, consequently, the provisions of that Article are inapplicable. I have already construed Article 111.1 as applying only to cases where both parties to the marriage are citizens of the Republic (*supra*). Consequently, as one of the parties in the present case is a British national, I hold that the provisions of Article 111.1 are inapplicable, and it, therefore, follows that the marriage of the parties in this case is not governed by the canon law of the Maronite Church but by English law, and by that law the marriage is a valid one.

Held, IV: As regards the fourth question (supra) *i.e. whether, the civil marriage being a valid one, either party in the present case is entitled to the relief sought:*—

(1) By her refusal to proceed with the religious ceremony the wife put it out of the husband's power to request intercourse. In fact, he expressed no intention of having intercourse before the religious marriage and on several occasions he requested the wife to consent to go through such marriage; and I accept his evidence that he would have been willing to have intercourse after the religious marriage and they would have lived together as man and wife in the fullest sense. As Hewson J. said (*Jodla* v. *Jodla* (*otherwise Czarnomska*)) [1960] 1 All E.R. 625, at p. 626 J. "such requests (for a religious

marriage) in the circumstances of this case, in my view, include an implied request for intercourse and to live wholly as man and wife". In the present case the husband's requests for a religious marriage were refused without any reasonable or just cause on the wife's part.

(2) By her refusal to proceed with the religious ceremony the necessity of which was understood by both parties, in the circumstances of this case, the wife made it impossible for the husband, with a good conscience, to live with her as her husband, and this refusal or failure to proceed with the religious ceremony was, in the present case, a reasonable and just cause for the husband to refuse intercourse, even if it had been requested (Cf. *Jodla* case, (*supra*) at p. 626).

(3) For these reasons I am satisfied that the wife is guilty of wilful refusal to consummate the marriage as she has refused to go through a religious ceremony as it was agreed and intended by both parties.

(4) I accordingly reject the wife's (petitioner's) prayer and grant a decree of nullity to the husband (respondent) on the ground of the wilful refusal on the wife's part to consummate the marriage and I award costs in favour of the husband (respondent).

Decree nisi and order for costs in respondent's favour: petitioner's prayer rejected.

Per curiam: Assuming that Article 111.1 of the Constitution (*supra*) was applicable and that, consequently, the present nullity suit was cognizable exclusively by the ecclesiastical tribunal of the Maronite Church sitting in the Lebanon, would that mean that persons ordinarily resident in the Republic of Cyprus would be compelled to resort to a tribunal sitting in another country to have their matrimonial cause tried there? Was it the intention of the framers of the Constitution to force parties to a matrimonial suit to have their case tried outside the Republic and then not by a civil Court, but by an ecclesiastical tribunal with limited powers of relief? And, if there is no ecclesiastical tribunal sitting in Cyprus to hear such cases should not the Courts of the Republic determine the matter under the provisions of the Constitution and the Courts of Justice Law, 1960? Fortunately I am not called upon to decide

these matters in the present case, but I would commend them for consideration by the responsible quarters. Prior to Independence such suits were invariably tried by the Supreme Court of Cyprus. I need say no more.

Cases referred to:

Horton v. *Horton* [1947] 2 All E.R. 871, H.L.;

Jodla v. *Jodla* (*otherwise Czarnomska*) [1960] 1 All E.R. 625;

De Reneville v. *De Reneville* [1948] P. 100 at p. 109;

Salvesen (*or Von Lorang*) v. *Administrator of Austrian Property* [1927] A.C. 641;

Christodoulou v. *Christodoulou*, 1962 C.L.R. 68, at p. 81;

Jasonos v. *Jasonos* (*Matrimonial Petition No.* 14/61 *decided by the High Court of Justice on the 2nd of March*, 1962, *unreported referred to and followed in Christodoulou's case*, supra);

Parapano v. *Happaz* (1894) 3 C.L.R. 69, P.C.;

Tyllirou v. *Tylliros* (1962) 3 R.S.C.C. 21 at p. 25;

Lepre v. *Lepre* [1965] P. 52;

Papadopoulos v. *Papadopoulos* [1930] P. 55;

Chetti v. *Chetti* [1909] P. 67 at p. 78;

Gray (*orse. Formosa*) v. *Formosa* [1963] P. 259.

Matrimonial Petition.

Petition for declaring marriage null and void because of the wilful refusal of the husband to consummate it.

G. Tornaritis, for the petitioner.

E. Liatsos, for the respondent.

Cur. adv. vult.

The following judgment was delivered by:

JOSEPHIDES, J.: Although the factual side in this case does not present any difficulty, the legal aspect raises complicated

questions of private international law of public importance concerning matters of personal status which are expressly provided for under the Constitution of the Republic of Cyprus. The main legal question in this case is once more the interpretation of Article 111.1 of the Constitution which has given considerable difficulty in its application since Independence.

The wife in this case prays that the marriage between herself and the husband may be declared null and void owing to his wilful refusal to consummate the marriage. The husband denies wilful refusal to consummate the marriage, he alleges that he has been willing to consummate it and prays nullity on the ground that it has not been consummated owing to the wife's wilful refusal.

The parties, who are members of the Maronite Church, were married on the 12th March, 1966, at the register office in Enfield, London, England, but it is common ground that the marriage was never consummated. There was no religious ceremony.

The husband alleged that before the civil marriage was celebrated in England it was expressly agreed by the parties that a religious ceremony would take place in Cyprus in accordance with the rites and ceremonies of the Maronite Church; that each of the parties being a professed Maronite well knew that consummation could only follow after the religious ceremony; and that the wife on several occasions expressed her unwillingness to go through a religious ceremony with the husband as agreed.

The wife is a citizen of the Republic of Cyprus. She is a permanent resident of Cyprus and at the time of her marriage she was domiciled in Cyprus. She was born of Cypriot Maronite parents on the 9th June, 1943, at Ayia Marina Skylloura. She attended the village elementary school and afterwards St. Joseph's Convent School at Larnaca. She has been employed as a ground hostess at the Nicosia Airport since 1964. On the 10th February, 1966, she went on holiday to England where she met the husband for the first time. He had been living and working there since 1953. They were introduced to each other and a marriage was arranged within a few days which took place at the register office on the 12th March, 1966. The engagement lasted one week and the couple never went out alone. After the marriage they lived in a room

in the house of the wife's sister in London and they occupied the same bed but there was no sexual intercourse.

Eleven days after the marriage the wife returned to Cyprus and resumed her work as prearranged between the parties. The husband came to Cyprus on the 2nd July, 1966, and the parties lived together at Ayios Dhometios until the 9th September, 1966, but there was no sexual intercourse. I shall revert to the history of events as from the 9th September, 1966, onwards, after dealing with one or two other matters.

The husband was born of Cypriot Maronite parents on the 20th May, 1928, at Asomatos, Cyprus. He went to England in January, 1953, where he lived and worked until the 2nd July, 1966, when he returned to Cyprus. From March, 1960 to June, 1966 he worked as an electrical inspector in England. He then sold his car and returned to Cyprus where he secured employment with the Philco Company in Nicosia as a mechanic on the 15th September, 1966, and he has been living and working in Cyprus ever since. He is the holder of a British passport, issued by the Foreign Office in London, in which his national status is described as "British Subject: Citizen of the United Kingdom and Colonies".

On the evidence before me I am satisfied that the husband is domiciled in Cyprus.

On the factual side the main issue in this case is that each party says that the other wilfully refused to consummate the marriage. As stated in Rayden on Divorce, tenth edition, at page 140, paragraph 74, where all the authorities on the point are summarised, "a marriage is voidable at the suit of a spouse if it has not been consummated owing to the wilful refusal of the other spouse to consummate it. The consummation must be proposed to the refusing party with such tact, persuasion and encouragement as an ordinary spouse, uses in such circumstances; and the refusal connotes a settled and definite decision arrived at without just excuse". Mere neglect is not enough, and the burden of proof is on the petitioner. There may be wilful refusal to consummate marriage although the parties had sexual intercourse together before the marriage. The case of *Horton* v. *Horton* [1947] 2 All E.R. 871, H.L., is one of the cases cited in support of this statement of the law. In *Jodla* v. *Jodla* (*otherwise Czarnomska*) [1960] 1 All E.R.

625, the husband's failure to arrange a church ceremony of marriage was held in the circumstances to be tantamount to wilful refusal. I shall revert to that case later.

I shall deal with the question of jurisdiction and the legal aspect of the case after I make my findings of fact.

The evidence adduced in the present case was that of the parties and of a witness called on behalf of the husband, the Suffragan Bishop of the Maronite Church in Cyprus. The wife's version was that after the marriage in England she proposed to the husband to consummate the marriage but he refused, and that when she asked him to give the reason for such refusal he said "we shall have intercourse when we go to Cyprus". The wife further stated that while they were living in Ayios Dhometios between July and September, 1966, she again proposed intercourse to the husband repeatedly but he refused and he did not give any reason for his refusal. On the 9th September, 1966, she told her husband that she could no longer live with him as he was not treating her as his wife and that she wanted to separate. He thereupon hit her and left the matrimonial home. It was also her case that he had assaulted her in August 1966, after she had refused to give up her work. The husband went back to the matrimonial home on the 14th September collected his belongings and left the home finally on the 15th September, 1966.

On the question of the religious ceremony, the wife's version was that they had agreed to go through a civil marriage in England and that if they continued living there they would not go through a religious ceremony at all; and that when they returned to Cyprus they would decide whether to have a religious ceremony or not. She said that she wanted to go through a religious ceremony when they came to Cyprus. She further asserted that the husband did not mention to her that he wanted a religious marriage. In August 1966, when she was assaulted by the husband, the Suffragan Bishop saw her and he suggested a religious marriage, but she did not consent. The Bishop on another occasion offerred to reconcile the parties and advised a religious ceremony but she refused because, as she stated to the Bishop, the husband was not a man who was in a position to perform his conjugal rights. The wife further conceded that it is customary for members of the Maronite Church to be engaged in the first instance and then to go through a religious marriage.

She further stated that originally they were planning to live in England but when she returned to Cyprus her parents objected to that and she wrote to the husband about their objection. He wrote back saying that he would come to Cyprus to consider the matter. When he did eventually come to Cyprus on the 2nd July, 1966, he was, according to the wife, a changed man. He informed her that he had given up his work, sold his car and had come to Cyprus to see whether he could live here or go back to England. At first he did not try to find work in Cyprus. She continued working but he wanted her to give up her work and told her that he did not want her to speak to other men nor did he want many people to visit them. As already stated, it was in August, 1966, that he hit her when she refused to give up work. This is the wife's version which stands unsupported by any other evidence.

The husband's version is that it was agreed between the parties in England that they would first go through a civil marriage there and then come to Cyprus, where their parents lived, to celebrate the religious marriage. He said that he knew that, according to the canon law of the Maronite Church, the parties would be considered as validly married after the religious ceremony. He conceded that no sexual intercourse took place because he waited for the religious marriage to be celebrated first. When he came to Cyprus in July 1966 he suggested to the wife to go through a religious ceremony but she replied "not yet, I am not ready yet" and she added that they must wait. About a week later he repeated his request for a religious ceremony but she again refused. Meantime he had bought the wedding gown, shoes and other accessories for the wife. He then went and saw the Suffragan Bishop of the Maronite Church in Cyprus who, at the husband's request, saw the wife repeatedly to persuade her to have a church ceremony but she refused. On the 15th September, 1966, he secured employment as a mechanic with the Philco Company in Nicosia. He denied that he went through the civil marriage in England for taxation relief, as alleged by the wife.

On the question of the wife's refusal to go through a religious ceremony, the husband's version is fully corroborated by the evidence of the Bishop Suffragan of the Maronite Church in Cyprus. In September 1966, the Bishop at the husband's request, advised the wife to go through a religious marriage but she asked for a little time to consider the matter. Some fifteen days later she informed the Bishop that she was not

willing to go through a religious marriage as she did not want to be married to the husband. In October 1966, the Bishop invited the wife with her father to his office and he again advised religious marriage in her father's presence. She replied that she did not want the husband in any way as there was "incompatibility of character", and she thought that she would be unhappy with him. Her father pressed her to go through the religious marriage but she refused saying that the husband was cruel to her. The Bishop tried for a third time to reconcile the parties and have the religious marriage celebrated. This was at the end of October 1966, in the presence of the parties, their parents and other relatives. The wife again refused to go through a religious marriage saying that the husband was cruel.

The Suffragan Bishop gave evidence also with regard to the canon law of the Maronite Church. He said that his Church does not recognise the civil marriage as a valid marriage and that it only recognises the religious marriage. Sexual intercourse can only take place after the religious ceremony. No divorce is granted by the Ecclesiastical Tribunal of the Maronite Church but a marriage may be declared null and void on the ground of non-consummation. No ecclesiastical tribunal of the Maronite Church holds sittings in Cyprus. Members of that Church have to apply to the ecclesiastical tribunal sitting in Beirut, Lebanon. The Suffragan Bishop and two other priests in Cyprus take statements from the interested parties which statements are then sent to the ecclesiastical tribunal in Beirut for consideration and determination. Finally, the Bishop stated that the ecclesiastical tribunal in Beirut has competence to deal only with religious marriages and that it is not competent to declare a civil marriage, like the present one, null and void. This concludes the summary of the evidence adduced in the present case.

Having watched the parties giving their evidence in the witness box and accepting, as I do, the evidence of the Suffragan Bishop in toto, which evidence corroborates to a great extent the husband's version as to what took place in Cyprus with regard to the wife's refusal to go through a religious ceremony, I have no hesitation in accepting the husband's version as the true one, and in rejecting that of the wife. It, therefore, follows that I find as a fact that before the parties went through the civil marriage in England they expressly agreed that they would, as professed members of the Maronite Church, go

through a religious ceremony. I further find that the wife repeatedly refused to go through the religious marriage which had been agreed upon.

On these findings of fact I now proceed to consider the legal points which arise in the present case. They are the following:

(1) The first question that I must determine is whether I have any jurisdiction to try this suit. If only English law was applicable to the present case (see sections 19(b) and 29(2)(b) of the Courts of Justice Law, 1960), would this be the competent tribunal to declare the marriage null and void?

(2) If yes, what is the effect of Article 111, paragraph 1, of the Constitution, on the jurisdiction of this Court in the present nullity proceedings?

(3) Was the civil marriage in England a valid marriage having regard to the provisions of Article 111, paragraph 1, of the Constitution?

(4) Assuming the civil marriage to be a valid one, is either party in the present case entitled to the relief sought?

As regards the *first question*: In England the Court has jurisdiction to entertain a suit for nullity where both parties are domiciled in England at the commencement of the suit: see *De Reneville* v. *De Reneville* [1948] P. 100, at page 109; *Salvesen (or Von Lorang)* v. *Administrator of Austrian Property* [1927] A.C. 641. This is an application of the general principle of private international law that the Court of the domicile of the parties has a claim superior to all other Courts to determine the status of the parties, and that the decree of such a Court must be accepted as valid by all other Courts; but such jurisdiction is not an exclusive one. The Court has also jurisdiction where the petitioner only is domiciled in England, or where both parties are *bona fide* resident in England at the commencement of the suit, or where the respondent is so resident (see Rayden on Divorce, tenth edition pages 53 and 57, paragraphs 30 and 32). Moreover, in the case of proceedings for nullity by the wife, the Court in England has jurisdiction if the wife has been ordinarily resident there for a period of three years immediately prior to the commencement of the proceedings (section 18(1)(b) of the Matrimonial Causes Act, 1950, now replaced by section 40(1)(b) of the Matrimonial Causes Act, 1965).

In the present case the parties are domiciled in Cyprus and, consequently, this Court would have jurisdiction to entertain the present suit if only English law was applicable to the present case under the provisions of the Courts of Justice Law, 1960.

The *second question* is what is the effect of Article 111.1 on the jurisdiction of this Court in the present nullity proceedings?

Both counsel submitted that this Court has jurisdiction to try the present case. 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".

Paragraph 3 of Article 2, referred to in Article 111.1, with regard to members of a religious group, reads as follows:

> "For the purposes of this Constitution—.....
>
> "(3) citizens of the Republic who do not come within the provisions of paragraph (1) or (2) of this Article shall, within three months of the date of the coming into operation of this Constitution, opt to belong to either the Greek or the Turkish Community as individuals, but, if they belong to a religious group, shall so opt as a religious group and upon such option they shall be deemed to be members of such Community."

The members of the Maronite Church in Cyprus have been recognized as a religious group within the meaning of the aforesaid Article 2.

It would seem that Article 111 contains provisions relating to the substantive law of marriage applicable to a matrimonial suit in which a citizen of the Republic and a member of a

religious group recognised under the Constitution is a party, and that it also contains provisions relating to the competence of the Court which is to try such a suit. In Article 111 it is expressly provided that, subject to the provisions of the Constitution, any matter relating to nullity of marriage of members of a religious group, within the ambit of Article 2(3), shall be governed by the law of the Church of such a religious group and "shall be cognizable by a tribunal of such Church". But the marriage solemnised between the parties in the present case, at a register office in England, being a civil and not a religious marriage, on the evidence of the Suffragan Bishop of the Maronites, the ecclesiastical tribunal of the Maronite Church sitting in the Lebanon would have no competence to try such a suit of nullity of marriage, as that tribunal has competence to try nullity cases arising out of religious marriages only. It would, therefore, follow that, as the present matrimonial cause is not cognizable by the ecclesiastical tribunal of the Maronite Church, under the provisions of section 19(b) of the Courts of Justice Law, 1960, this Court has exclusive original jurisdiction to hear and determine such a case: see *Jasonos* v. *Jasonos* (Matrimonial Petition 14/61*— unreported), referred to and followed in *Christodoulou* v. *Christodoulou* 1962 C.L.R. 68, at page 81.

But I think that there is an additional reason why the jurisdiction of this Court in the present case is not affected by the provisions of Article 111. That Article was presumably intended to continue substantially the application of the existing provisions, regarding personal status, which adopted the principles of the Ottoman Law prevailing in Cyprus: see *Parapano* v. *Happaz* (1894) 3 C.L.R. 69 (a case decided by the Privy Council); and the provisions of section 34 of the Courts of Justice Law, Cap. 8, originally enacted in 1935. It would also appear that that Article was further intended to take out of the competence of the Communal Chambers the matters of family status specified in that article, and to preserve, and not to extend, the existing competence of the ecclesiastical tribunals: see *Tyllirou* v. *Tylliros* (1962) 3 R.S.C.C. 21, at page 25, which referred to the competence of the ecclesiastical tribunals of the Greek-Orthodox Church. It should, however, be borne in mind that there was statutory provision, until the coming into operation of the Constitution, which recognized

* Decided on the 2nd March, 1962.

as valid a civil marriage between members of the same religious community (apart from members of the Greek-Orthodox Church or persons of the Moslem faith), as well as a civil marriage between members of two different religious communities; and that the Supreme Court of the Colony of Cyprus had exclusive jurisdiction in matrimonial causes between parties to such marriages.

Considering that Article 111.1 should be read in conjunction with Article 2.3 in which express reference is made to "*citizens*" of the Republic, and having regard to the exclusion of the competence of the Communal Chambers, which have competence only on citizens of the Republic, I am of the view that Article 111.1 should be construed as being applicable to citizens of the Republic only, that is to say, where *both* parties to the cause are citizens of the Republic. Consequently, as in the present case the husband is a British national the provisions of Article 111.1 do not apply and this Court has jurisdiction to hear and determine the suit.

Before I leave this point, however, I would like to make the following observations. Assuming that Article 111.1 was applicable and that, consequently, the present nullity suit was cognizable exclusively by the ecclesiastical tribunal of the Maronite Church sitting in the Lebanon, would that mean that persons ordinarily resident in the Republic of Cyprus would be compelled to resort to a tribunal sitting in another country to have their matrimonial cause tried there? Was it the intention of the framers of the Constitution to force parties to a matrimonial suit to have their case tried outside the Republic, and then not by a civil Court, but by an ecclesiastical tribunal with limited powers as to relief? And, if there is no ecclesiastical tribunal sitting in Cyprus to hear such cases, should not the Courts of the Republic determine the matter under the provisions of the Constitution and the Courts of Justice Law, 1960? Fortunately, I am not called upon to decide these matters in the present case, but I would commend them for consideration by the responsible quarters. Prior to Independence such suits were invariably tried by the Supreme Court of Cyprus. I need say no more.

The third question is whether the civil marriage solemnised in England between the parties in the present case was a valid marriage, having regard to the provisions of Article 111.1. Both counsel submitted that the civil marriage was a valid one.

Article 111.1 of the Constitution provides that any matter relating to the marriage of members of a religious group (as defined in Article 2.3 of the Constitution), shall be governed by the law of the Church of such religious group. The question which arises for determination in the present case is whether such a provision has extra-territorial application, that is to say, whether members of such religious group cannot be married at a civil registry in any part of the world and that the only valid marriage, wherever they may happen to be, has to be solemnised in the Church.

But for the provisions of Article 111, the law applicable in matrimonial causes before this Court, under the provisions of section 29(1)(c) and (2)(b) of the Courts of Justice Law, 1960, would be the English principles of private international law which form part of the common law. Formal validity of a marriage, under that law, depends solely upon the *lex loci celebrationis*; and essential validity is a matter for the personal law of the parties (Cheshire's Private International Law, seventh edition, page 289). Capacity to marry is governed by the law of each party's antenuptial domicile (Dicey and Morris, The Conflict of Laws, eight edition, page 254, rule 31).

According to the evidence of the Maronite Suffragan Bishop in the present case, the religious ceremony is not considered as a form of marriage only but as a condition of the essential validity of marriage without which the marriage is considered as void and non-existent. On the other hand, there is no doubt that the civil marriage solemnised between the parties in the present case at a register office in England is considered as valid in England as the English Courts would consider the provision that the marriage ceremony did not comply with canon law as offending intolerably against the concept of justice prevailing in the English Courts and should not be accorded recognition (see *Lepre* v. *Lepre* [1965] P. 52, to which I shall refer later).

If we accepted the argument that, so long as the religious ceremony related to the essential validity of marriage by virtue of the provisions of Article 111.1, the principle of *locus regit actum* cannot apply, and that marriages of citizens of the Republic who belong to a Church of a religious group, wherever solemnised, would be void if not solemnised in accordance with the rites of that Church, the result would be that the marriage contracted in England by the parties in the present

case would be considered as valid in England and void in Cyprus. Attention has recently been called to the problem of marriages which are valid in one country and not valid in other countries. They institute one type of limping marriages which are themselves inherently liable to cause hardship and injustice.

According to English Law, which would be applicable but for the provisions of Article 111.1, "the personal law of a party which governs his capacity to marry must not offend against English public policy. Thus English law does not recognise a disability to marry, imposed by foreign law, of a religious or penal character" (Rayden on Divorce, tenth edition, page 103, paragraph 19). In *Papadopoulos* v. *Papadopoulos* [1930] P. 55, a case decided on appeal by the Divorce Division in England, the husband, a domiciled Cypriot, married a French-woman in England at a register office according to English law but there was no religious ceremony. Afterwards he repudiated the marriage on the ground that it was not in form in accordance with the law of his domicile. The ground of repudiation was an assertion that he was at the time a member of the Greek Orthodox Church and that the marriage of members of that Church in Cyprus could only be effectually solemnised in a church in the presence of a priest. It was held that the marriage in England was valid. In the course of his judgment the President, Lord Merrivale, said, (at page 64): "The suggested disability of a member of the Greek Church in Cyprus to marry otherwise than in accordane with the rules of that Church was what Sir Gorell Barnes designated in *Chetti* v. *Chetti* [1909] P. 67, 78, a disability which can be got rid of at will and, therefore, was no bar to this marriage".

In *Gray* (*orse. Formosa*) v. *Formosa* [1963] P. 259, the respondent, a Maltese national, went through a form of marriage with the petitioner, an Englishwoman, in a registry office in England. Both parties at the time were domiciled in England. Later the petitioner applied for and obtained an order that the respondent should maintain her and the children but the Court in Malta refused to confirm the order on the ground that the so-called marriage between the parties was a nullity because the respondent was a Roman Catholic but had not been married in a Roman Catholic Church. It was held (by the Court of Appeal in England) that although the English Courts would recognise a decision of a foreign Court affecting persons within its jurisdiction, the English Courts retained a residual discretion to refuse to recognise a decision which

offended English views on substantial justice, and that the Maltese decision that the marriage was void, because it had not been solemnised in the church of a particular denomination, did so offend and should be disregarded.

Finally, in *Lepre* v. *Lepre* [1965] P. 52 (referred to earlier in this judgment), the wife, who was born and domiciled in England, married the husband, who was born and brought up in Malta and was baptised according to the rites of the Roman Catholic Church, at the register office at Portsmouth. Subsequently, the Civil Court of Malta, holding that the husband was at all times domiciled in Malta and that by his *lex domicilii* he was unable to contract a marriage other than by canon law, granted him a decree of nullity on the ground that the civil marriage between the parties in England failed to comply with canon law. It was held (by the English Divorce Court) that the Maltese decree of nullity pronounced on the ground that the marriage ceremony did not comply with canon law must be taken to offend intolerably against the concept of justice prevailing in the English Courts and should not be accorded recognition. In the course of his judgment Sir Jocelyn Simon P., referring to the case of *Gray* (*orse. Formosa*) v. *Formosa*, *supra*, and to the question of the extraterritorial application of the husband's law of domicile, said, at page 64: "I think the crux of their decision was that it was an intolerable injustice that a system of law should seek to impose extraterritorially, as a condition of the validity of a marriage, that it should take place according to the tenets of a particular faith". And, further on, he said: "Just as in *Chetti* v. *Chetti* [1909] P. 67, 72, Sir Gorell Barnes P. refused to give effect to an incapacity to marry outside his caste or religion imposed extraterritorially on the husband by the law of his domicile, so, I think, the Court of Appeal discerned in *Gray* (*orse. Formosa*) v. *Formosa* an attempt by Maltese law to impose an analogous incapacity based on creed: they would refuse to recognise the incapacity, so they refused to recognise the domiciliary decree founded upon it" (at page 64 of the report). He, therefore, held that the marriage was valid and subsisting and that the Maltese decree of nullity "should not be accorded recognition because it must be taken to offend intolerably against the concept of justice which prevails in our Courts" (page 65).

In the present case, however, it is not necessary to decide the question of the extraterritorial application of Article 111.1

as it has been submitted that one of the parties is not a citizen of Cyprus and that, consequently, the provisions of that Article are inapplicable. I have already construed Article 111.1 as applying only to cases where both parties to the marriage are citizens of the Republic. Consequently, as one of the parties in the present case is a British national, I hold that the provisions of Article 111.1 are inapplicable, and it, therefore, follows that the marriage of the parties in this case is not governed by the canon law of the Maronite Church but by English law, and by that law the marriage is a valid one.

Question 4: As I find that the civil marriage solemnised in England is a valid one, I have now to decide whether either party in the present case is entitled to the relief sought. Before I do so I think I should refer to the English case of *Jodla* v. *Jodla* (otherwise Czarnomska) [1960] 1 All E.R. 625. In that case the parties, who were of Polish nationality, were married at a register office in England. At that time, they being Roman Catholics, agreed that they would also have a church ceremony of marriage and it was understood that consummation of the marriage would follow after that church ceremony. The marriage was never consummated. The wife made several requests to the husband to arrange a church ceremony but he refused to do so. The husband never expressly requested the wife to have sexual intercourse with him. Each party alleged that the other had wilfully refused to consummate the marriage. The wife was granted a decree of nullity because wilful refusal to consummate the marriage was the husband's as he had failed to arrange for a church ceremony, which would have been just cause for the wife, having regard to their faith, to have refused intercourse, if it had ever been requested.

In the present case I have found as a fact that before the parties went through the civil marriage in England they expressly agreed that they would, as professed members of the Maronite Church, go through a religious ceremony; that the wife repeatedly refused to go through a religious marriage, as agreed upon; and that the husband failed to have sexual intercourse with the wife and that, in fact, the marriage was never consummated.

By her refusal to proceed with the religious ceremony the wife put it out of the husband's power to request intercourse. In fact, he expressed no intention of having intercourse before the religious marriage and on several occasions he requested

the wife to consent to go through such marriage; and I accept his evidence that he would have been willing to have intercourse after the religious marriage and they would have lived together as man and wife in the fullest sense. As Hewson J. said in the *Jodla* case, at page 626G, "such requests (for a religious marriage) in the circumstances of this case, in my view, include an implied request for intercourse and to live wholly as man and wife". In the present case the husband's requests for a religious marriage were refused without any reasonable or just cause on the wife's part.

By her refusal to proceed with the religious ceremony, the necessity for which was understood by both parties, in the circumstances of this case, the wife made it impossible for the husband, with a good conscience, to live with her as her husband, and this refusal or failure to proceed with the religious ceremony was, in the present case, a reasonable and just cause for the husband to refuse intercourse, even if it had been requested (cf. *Jodla* case, at page 626D).

For these reasons I am satisfied that the wife is guilty of wilful refusal to consummate the marriage as she has refused to go through a religious ceremony as it was agreed and intended by both parties. I accordingly reject the wife's (petitioner's) prayer and grant a decree of nullity to the husband (respondent) on the ground of the wilful refusal on the wife's part to consummate the marriage and I award costs in favour of the husband (respondent).

Decree nisi and order for costs in respondent's favour as above. Petitioner's prayer rejected.

Decree nisi and order for costs in respondent's favour; petitioner's prayer rejected.