[STAVRINIDES, J.]

PANAYIOTIS PHOTIOU MICHAEL,

Petitioner,

v.

ZEHAVA R. M. MALKIEL,

Respondent.

(Matrimonial Petition No. 3/75).

Matrimonial Causes—Formal validity of marriage—Husband a citizen of the Republic, a member of the Greek Orthodox Church of Cyprus and domiciled in Cyprus—Wife a citizen of Israel, professing the Jewish religion and domiciled in Cyprus—Civil marriage celebrated in Cyprus under the Marriage Law, Cap. 279—A valid one—Articles 111.1 *and* 22.2 *(b) and (c) of the Constitution and s.* 29(1)(*b*) *of the Courts of Justice Law,* 1960 (*Law* 14 *of* 1960).

Constitutional Law—Article 111.1 *of the Constitution—No intended to apply when neither of the parties to the marriage is a member of the Greek Orthodox Church nor where either of them is not—Article* 22.2(*b*) *and* (*c*) *of the Constitution.*

Constitutional Law—Article 22.2(*b*) *and* (*c*) *of the Constitution—Provisions thereof regarding making of a law governing marriage—Satisfied by s.* 29(1)(*b*) *of the Courts of Justice Law,* 1960 (*Law* 14 *of* 1960).

Conflict of Laws—Capacity to marry—Governed by Law of each party's antenuptial domicile—Both parties in this cause being domiciled in Cyprus, essential validity of marriage is governed by law of Cyprus.

The petitioner went through a civil marriage with the respondent at the District Officer's Office Kyrenia on March 15, 1972. He is a citizen of the Republic, a member of the Greek Orthodox Church of Cyprus, and domiciled here. The respondent is also domiciled here, she is a citizen of Israel and professes the Jewish religion. Petitioner sought a declaration that the said marriage is a nullity. Both parties have relied on Article 111.1 of the Constitution read together with Article 22.2 (b) and (c) (*note:* Both articles are quoted in full at pp. 274–275 of the judgment *post*). Counsel for the respondent attacked the

essential validity of the marriage by reference to the law of Israel, which, according to him, is "the personal law" of the respondent.

Held, (1) it is clear from the provisions of Article 22 that Article 111.1 was not intended to apply when neither of the parties to the proposed marriage is a member of the Greek Orthodox Church, nor where either of them is not; for under those provisions marriage in either of such cases "is governed by a law of the Republic".

(2) Though it is true that no Law regarding marriage has been enacted by the House of Representatives, as provided by Article 22.2(b), it would surely be absurd to suggest that as a result of such omission the provisions of this Article must be treated as a dead letter. It is clear that the true view is that the provisions in question have been satisfied by s. 29(1)(b) of the Courts of Justice Law, 1960. It follows that, so far as form is concerned, the marriage is a valid one.

(3) Capacity to marry is governed by the law of each party's antenuptial domicile: See Dicey and Morris, Conflict of Laws (9th Edn.) p. 258, r. 34, and the cases there cited. Here the respondent, as well as the petitioner, has relied on being domiciled in this country and therefore the essential validity of the marriage falls to be determined by our own domestic law. But there is nothing in this law to prevent marriage between the parties and hence the marriage is a valid one.

Petition dismissed.

Cases referred to:

HjiJovanni v. *HjiJovanni* (1969) 1 C.L.R. 207;

HjiHanna v. *HjiHanna* (1973) 1 C.L.R. 186;

Michael v. *Michael* (1971) 1 C.L.R. 211.

Matrimonial Petition.

Petition by the husband for a declaration that his marriage with the respondent is a nullity.

G. Kaizer, for the petitioner.

A. Emilianides, for the respondent.

Cur. adv. vult.

The following judgment was delivered by:-

STAVRINIDES, J.: The petitioner seeks a declaration that a

marriage that he went through with the respondent in the District Officer's office at Kyrenia on March 15, 1972, is a nullity.

Although appearance has been entered for the respondent and a pleading on her behalf filed, the petition is not really opposed, and counsel on both sides have addressed me in support of the thesis that the marriage is a nullity.

The petitioner is a citizen of the Republic, a member of the Greek Orthodox Church of Cyprus, and domiciled here. The respondent, who also is domiciled here, is a citizen of Israel and professes the Jewish religion.

On both sides reliance has been placed on art. 111.1 of the Constitution. Further, in para. 3 of the respondent's pleading it is stated that "She (the respondent) is not married in accordance with the law applicable in Israel".

Counsel for the respondent cited three Cyprus cases, *viz.* *HjiJovanni* v. *HjiJovanni*, (1969) 1 C.L.R. 207, *HjiHanna* v. *HjiHanna*, (1973) 1 C.L.R. 186, and *Michael* v. *Michael*, (1971) 1 C.L.R. 211. With respect to him, none of these cases is of any assistance, and I think it unnecessary to discuss them.

What may, for convenience, be called the official English text of art. 111.1 reads:

> " 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 para. 3 of art. 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 was conceded that that provision must be read together with art. 22(2)(b) and (c) of the Constitution, the official English text of which reads:

> " (b) if the provisions of art. 111 are not applicable to

any of the parties to the marriage and neither of such parties is a member of the Turkish Community, the marriage shall be governed by a Law of the Republic which the House of Representatives shall make and which shall not contain any restrictions other than those relating to age, health, proximity of relationship and prohibition of polygamy;

(c) if the provisions of art. 111 are applicable only to one of the parties to the marriage and the other party is not a member of the Turkish Community, the marriage shall be governed by the law of the Republic as in sub-para. (b) of this paragraph provided:

Provided that the parties may elect to have their marriage governed by the law applicable, under art. 111, to one of such parties in so far as such law allows such marriage."

Whatever might otherwise have been thought as to the meaning of art. 111.1, it is clear from the provisions of art. 22 just quoted that it was not intended to apply when neither of the parties to the proposed marriage is a member of the Greek Orthodox Church, nor where either of them is not; for under those provisions marriage in either of such cases "is governed by a Law of the Republic". Now it is true that no Law regarding marriage has been enacted by the House of Representatives except one each in the years 1962, 1966, and 1969, making some very minor amendments to the Marriage Law, Cap. 279, which regulated civil marriage at the time of independence with the exception of cases where both parties were members of the Greek Orthodox Church or where one of them was "a Turk professing the Moslem faith" (ss. 36 and 34 respectively). But it would surely be absurd to suggest that as a result of such omission the provisions of the above quoted sub-paragraph must be treated as a dead letter. It is clear, in my judgment, that the true view is that the provisions in question have been satisfied by s. 29(1)(b) of the Courts of Justice Law, 1960—a Law, as its year shows, passed not long after independence—providing for the application of the Laws saved by art. 188.1 of the Constitution, which include Cap. 279.

It follows that, so far as form is concerned, the marriage in question is a valid one. But counsel for the respondent in his address attacked its essential validity by reference to the law of Israel, which, according to him, is "the personal law" of the

respondent. Actually there is nothing before me showing what the law of Israel is as regards any particular matter. But whatever it may be is of no consequence in this case. It is well settled that capacity to marry is governed by the law of each party's antenuptial domicile: see Dicey and Morris, Conflict of Laws (9th Edn.), p. 258, r. 34, and the cases there cited. Here the respondent, as well as the petitioner, has relied on being domiciled in this country and therefore the essential validity of the marriage falls to be determined by our own domestic law. But there is nothing in this law to prevent marriage between the parties and hence the marriage is altogether a valid one.

For these reasons the petition is dismissed. Had it not been for her attitude in supporting the petition, I would, of course, have ordered the petitioner to pay her costs; but as it is she must be left to bear her own costs.

Petition dismissed. Each party to bear its own costs.