1979 December 14

[A. Loizou, J.]

SIMONE LUCIENNE ECONOMIDES,

Applicant,

v.

EFSTRATIOS, ALIAS TAKIS, ECONOMIDES.

Respondent,

(*Civil Application No.* 29/73).

Matrimonial Causes—Jurisdiction—Maintenance for wife and children—Civil marriage celebrated in 1951 *at the Register office of St. Pancras in London—Followed by an ecclesiastical marriage in accordance with the rites of the Greek-Orthodox Church—Husband a member of the Greek-Orthodox Church and wife a member of the Roman Catholic Church—Even if Ecclesiastical Tribunal of one of the parties empowered to dissolve the religious marriage it cannot dissolve their said civil marriage which was a valid one—Causes arising from civil marriage not cognizable by a Tribunal of a Church under Article* 111 *of the Constitution or by a Court established by a Communal Law under Article* 160 *of the Constitution—Supreme Court vested with exclusive original jurisdiction to deal with application for maintenance—Section* 19(b) *of the Courts of Justice Law,* 1960 (*Law* 14/60)—*Section* 40 *of the same Law cannot be considered as taking away the jurisdiction of the Supreme Court given to it by section* 19(b)—*No inconsistency or repugnancy between the two sections*—Mantovani *v.* Mantovani, 1962 *C.L.R.* 336 *applied*—Michael *v.* Michael (1971) 1 *C.L.R.* 211 *and* Charakis *v.* Loizou (1972) 1 *C.L.R.* 102 *distinguished—Sections* 34 *and* 36 *of the Marriage Law, Cap.* 279.

The parties to these proceedings were married on the 5th September, 1951 at the Register Office of St. Pancras, London, under the Marriage Act, 1949; and about one month after this marriage they, also, went through an ecclesiastical marriage ceremony, in accordance with the rites of the Greek-Orthodox Church at Alexandria Egypt. The husband, though not expressly stated to be so, has been considered for all intents and purposes

as a member of the Greek-Orthodox Church and the wife, who was of Belgian origin, as a member of the Roman Catholic Church. There was nothing in the record as to the nationality of the parties but in the marriage certificate it was stated that they were both residents of the United Kingdom at the time of the marriage.

It appeared that some time after the marriage the parties came and established themselves in Famagusta where the husband worked as an architect. As the husband left the conjugal home and was only partly providing for the maintenance of the wife and their daughter, on November 21, 1973 the wife applied for maintenance under section 23(1)* of the English Matrimonial Causes Act, 1950; and although the husband had originally raised in his opposition the question of lack of jurisdiction he did not pursue it and eventually a settlement was reached and a consent order was made for the payment of C£150.—per month maintenance for the wife and the daughter.

On November 5, 1977 the husband applied to set aside or cancel the said maintenance order on the ground that the Supreme Court had no jurisdiction to make such an order in view of the provisions of section 40** of the Courts of Justice Law, 1960 (14/60) as one of the parties was a member of the Greek-Orthodox Church and the marriage was celebrated in accordance with the rites of that Church.

Counsel argued that the proper Court to make a maintenance order was, by virtue of the said section 40 and Articles 2 and 111*** of the Constitution, the District Court.

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

"19. The Supreme Court shall, in addition to the powers and

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* Quoted at p. 647 *post.*

** Quoted at p. 649 *post.*

*** Article 111.1 of the Constitution 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 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".

jurisdiction conferred upon it by the Constitution, have exclusive original jurisdiction—

(a) .....

(b) 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".

On the question whether the Court had jurisdiction to entertain an application for a maintenance order:

Held, (1) that when the parties to the present proceedings were married by the Marriage Officer of St. Pancras, London, on the 5th September, 1951, long before the coming into operation of the Constitution, they were legally married to each other for all purposes of the Civil Law and the consequences of their marriage could not be dissolved during their life-time except by a valid judgment of divorce; that they were, when they left the office of the Registrar of St. Pancras, a legally married couple for all intents and purposes, and each of them acquired the status of a married person; and that the fact that they went through a religious ceremony later did not in any way alter their status one way or the other (see *Mantovani* v. *Mantovani*, 1962 C.L.R. 336).

(2) That even if the Ecclesiastical Tribunal of one of the two parties, or in this case of the Church to which the applicant-husband belonged, was empowered to dissolve the religious marriage of the parties, solemnized in Alexandria about a month after their civil marriage, it cannot really dissolve the marriage of the parties celebrated by a marriage officer in England under the laws of that country; and that had their marriage taken place in Cyprus at the time they would have been legally entitled to be married at the Commissioner's Office under the provisions of the Marriage Law, Cap. 279, as same would not be falling within

the exceptions provided by sections 34 and 36 of that Law, and as such this Court would have jurisdiction to entertain any cause arising therefrom (*Michael* v. *Michael* (1971) 1 C.L.R. 211 and *Charakis* v. *Loizou,* (1972) 1 C.L.R. 102 distinguished).

(3) That the submission to a consent order for maintenance by the applicant when duly represented by counsel, and after an objection to the jurisdiction of the Court was raised in the opposition, must be taken as far as the factual aspect of this case is concerned, as an admission that all facts that would have been necessary to bring this case within the ambit of Article 111 of the Constitution were lacking; and that, therefore, as this was a matrimonial cause which was not 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, this Court, had under section 19(b) of Law 14/60 exclusive original jurisdiction to deal with the matter at the time which before independence would have been heard and determined by it.

(4) That section 40 of Law 14/60 cannot be considered in a way as taking away the jurisdiction of this Court given to it by section 19(b) of this Law; that moreover, section 40(2) which is a deeming provision applies only to cases where Article 111 of the Constitution applies and does not and cannot take away any of the exclusive jurisdiction of this Court given to it by section 19(b); that there is no inconsistency or repugnancy between the two as section 40 applies only where an Ecclesiastical Tribunal of the Greek-Orthodox Church or of a Church to which the provisions of paragraph 1 of Article 111 of the Constitution apply, would have power to entertain a cause brought by a wife in respect of her marriage; and that in this case no such Tribunal would have power to entertain a matrimonial cause brought by the respondent in respect of her marriage at St. Pancras (see, *inter alia*, the *Mantovani* case (*supra*)); and that, therefore, this Court has had jurisdiction to entertain this application for a maintenance order.

Order accordingly.

Cases referred to:

Mantovani v. *Mantovani*, 1962 C.L.R. 336;

Kaprielian v. *Kaprielian* (1963) 2 C.L.R. 143;

Dokidou v. *Dokides* (1971) 1 C.L.R. 124;
HjiJovanni v. *HjiJovanni* (1969) 1 C.L.R. 207;
Michael v. *Michael* (1971) 1 C.L.R. 211;
Charakis v. *Loizou* (1972) 1 C.L.R. 102;
Savvides v. *Skopelitou* (1979) 1 C.L.R. 113;
Metaxas v. *Mita* (1977) 1 C.L.R. 1.

Application.

Application by the husband for an order to discharge, set aside or cancel a maintenance order made against him for the benefit of his wife and daughter.

G. Mitsides for *L. Papaphilippou*, for the applicant.

A. Indianos, for the respondent.

Cur. adv. vult.

A. LOIZOU J. read the following judgment. This is an application by the husband for an order, *inter alia*, to discharge, set aside or cancel a maintenance order made against him on the 9th February, 1974, for the benefit of his wife and daughter Franscoise (we are only, however, concerned now with the order in so far as it relates to his wife) as being void ab initio, in that the Supreme Court that made that order had no jurisdiction or power to do so.

This issue of jurisdiction was, on the application of both sides, tried as preliminary to the hearing of the application on the remaining grounds. The relevant facts are as follows:-

The parties were married on the 5th September, 1951, under The Marriage Act of 1949 at St. Pancras Register Office, London, U.K. There were four children from this marriage, the last one being Franscoise who was born on the 22nd October, 1957, and who since the making of the maintenance order has come of age.

It appears that the parties came to Cyprus and established themselves in Famagusta where the husband worked as an architect. On the 2nd August, 1973, he left the conjugal home and he was only partly providing for the maintenance of the applicant and their said daughter, hence the original application for a maintenance order. Nothing appears in the record as to the nationality of the parties, but in the Marriage Certificate

produced (*exhibit* 1), it is stated that both spouses were at the time of the marriage residents of the United Kingdom.

In the course of the hearing of this application it was admitted that the parties went also through an ecclesiastical marriage ceremony in accordance with the rites of the Greek Orthodox Church at Alexandria, Egypt, about a month after their civil marriage. The husband, though not expressly stated to be so, has been considered for all intents and purposes as a member of the Greek Orthodox Church and the wife, of Belgian origin, as belonging to the Roman Catholic Church.

Although the question of lack of jurisdiction was raised in the opposition filed to the original application, same was not pursued and eventually a settlement was reached and a consent order was made for the payment of C£150.–per month for the maintenance of the wife and their daughter Franscoise, but as stated in the said order, "exclusive, as regards the latter, of the expenses of her education, provision for wearing apparel and footwear and other expenses, and pocket money". The first payment was payable on the 5th March, 1974.

That application was based on section 23(1) of the Matrimonial Causes Act of 1950, which reads:–

"23–(1) Where a husband has been guilty of wilful neglect to provide reasonable maintenance for his wife or the infant children of the marriage, the Court, if it would have jurisdiction to entertain proceedings by the wife for judicial separation, may, on the application of the wife, order the husband to make to her such periodical payments as may be just; and the order may be enforced in the same manner as an order for alimony in proceedings for judicial separation."

For the purpose of the enforcement of the said order, an application was made to a Judge of the Supreme Court for the transfer of that order to the District Court of Nicosia. That application was based on rule 83 of the Matrimonial Causes Rules (Subsidiary Legislation of Cyprus, Vol. 2, p. 296, at p. 311) which in so far as relevant reads:–

"83–(1) In default of payment to any person of money at the time appointed for payment thereof by any order of the

Court (made in the exercise of its matrimonial jurisdiction) then, for the purpose of issuing execution under such order, application may be made *ex parte* to a Judge for transfer of the order to a District Court.

.....

If the application is granted, then, upon lodgment in the registry of the District Court named of a sealed copy of the order transferred together with a sealed copy of the order directing transfer, execution shall issue from such registry in the same manner as execution of a judgment of a District Court as if leave for the issue of such execution had been granted by the District Court."

It has been the case for the applicant—husband that the Supreme Court had no jurisdiction to make this maintenance order in view of the provisions of section 40 of the Courts of Justice Law, 1960 (Law No. 14 of 1960—to be referred to hereinafter as the Law) as one of the parties is a member of the Greek-Orthodox Church and the marriage was celebrated in accordance with the rites of that Church.

It was argued that the proper Court to have made a maintenance order, in the circumstances was under section 40 of the Law and the provisions of Articles 2 and 111 of the Constitution, the District Court.

Furthermore, it was the case for the applicant/husband that no concurrent jurisdiction could be given by these two sections in this respect to both the Supreme Court and the District Courts.

The jurisdiction of this Court in Matrimonial Causes is given by section 19 of the Law, which in so far as relevant, reads:

" 19. The Supreme Court shall, in addition to the powers and jurisdiction conferred upon it by the Constitution, have exclusive original jurisdiction—

(a) .....

(b) 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 40 sub-sections (1), (2) and (3) of the Law may usefully be set out hereinafter:

"40-(1) If any ecclesiastical tribunal of the Greek-Orthodox Church or of a Church to which the provisions of paragraph 1 of Article 111 of the Constitution apply (hereinafter referred to in this section as 'the Church') would have power to entertain a matrimonial cause brought by a wife in respect of her marriage, and the husband has been guilty of wilful neglect to provide reasonable maintenance for his wife or infant children of the marriage, a President of a District Court or a District Judge, on application of the wife, may make a maintenance order directing the husband to make to her such periodical payments as may be just.

(2) For the purposes of sub-section (1) an ecclesiastical tribunal of the Greek-Orthodox Church or of the Church shall be deemed to have power to entertain a matrimonial cause if it is proved or admitted before the Court that either party is a member of the Greek-Orthodox Church or of the Church and the marriage has been celebrated in accordance with the rites of that Church.

(3) Where any ecclesiastical tribunal of the Greek-Orthodox Church or of the Church has in the exercise of its jurisdiction annulled or dissolved a marriage, the President of a District Court or a District Judge on the application of the wife may make such provision as appears just with respect to the maintenance and education of the children the marriage of whose parents is the subject of the proceedings."

Before independence the jurisdiction of this Court in Matrimonial Causes was conferred to it by section 20 paragraph (b)

of the Courts of Justice Law, Cap. 8 with this difference: its provisions were made subject to the provisions of section 34 of that Law, whereas the provisions of section 19(b) are to be read subject to Article 111 of the Constitution. Section 34(a)(i) in so far as relevant to our case saved the jurisdiction of the Ecclesiastical Courts on Matrimonial Causes where:

" 2(a) either party is a member of the Greek-Orthodox Church and the marriage had been celebrated in accordance with the rights of the Greek-Orthodox Church."

As the question of the exclusive jurisdiction of this Court in Matrimonial Causes is of great importance, I shall attempt a review of the leading authorities on the subject.

In the case of *Mantovani* v. *Mantovani*, 1962 C.L.R., 336, the parties, both Cypriots domiciled in Cyprus—the husband a Roman Catholic and the wife a Greek-Orthodox—were married before Independence at the Commissioner's Office, Nicosia, under the provisions of the Marriage Law, Cap. 279. It was held that this Court had jurisdiction to entertain a petition for the dissolution of the marriage as the case did not fall within the exceptions of sections 34 and 36 of the Marriage Law in force at the time of the marriage and that the parties were legally entitled to be married at the Commissioner's Office under the provisions of that Law.

Vassiliades J., as he then was, on examining the question of the jurisdiction of this Court to entertain the petition and to grant the remedy sought, had this to say at p. 339:-

" The main question for decision, in these circumstances, is whether this Court has jurisdiction to entertain the petition and to grant the remedy sought.

The learned counsel on both sides, submitted that these two questions must be both answered in the affirmative. Mr. Joannides on behalf of the petitioner submitted that the parties were within their legal rights in contracting a civil marriage under the provisions of the Marriage Law (Cap. 279); and referred me to section 36 in support of his contention.

As neither the Roman Catholic nor the Greek-Orthodox

Church recognise such civil marriage, counsel further contended, and as the parties do not belong to the same religious group, article 111 of the Constitution, which is based on the division of the community in religious groups under the Constitution, is not applicable in their case. And this is the proper and only Court to deal with the matter, in its Matrimonial jurisdiction, applying the English Law as provided in section 19(b) of the Courts of Justice Law, and section 20 of Law 40 of 1953 (Cap. 8).

Mr. Lefkos Clerides for the respondent, on the other hand, submitted in his final address that article 111 applies only to cases where both parties belong to the same religious group, as defined in paragraph 3 of article 2 of the Constitution. He referred me to *Cosgrove* v. *Cosgrove* (Matr. Pet. 10/60 in this Court); and to *Tyllirou and Tylliros* (Case 128/61 in the Constitutional Court—3, R.S.C.C., 21). He agreed with counsel on the other side, that this is the proper Court to entertain the proceeding under section 19(b) of the Courts of Justice Law, applying the English law in the matter. All the more so, counsel added, as no Ecclesiastical Tribunal in this Country, will recognise the civil marriage subsisting between the parties; or entertain a proceeding therein.

I accept the submission made by learned counsel on both sides, that this Court has jurisdiction to hear and determine the present cause.

Not falling within the exceptions in sections 34 and 36 of the Marriage Law (Cap. 279) in force at the time of their marriage, the parties were legally entitled to be married at the Commissioner's Office, under the provisions of that Law. And having done so, they left the Commissioner's Office, a legally married couple; each acquiring the status of a married person.

As far as the law was concerned, the subsequent religious ceremony in the Roman Catholic Church, did not add anything to that status; nor did it, in any way, affect it at all. Same as the non-performance of a religious ceremony in the Greek-Orthodox Church, of which the wife is a member, did not in any way affect the legal status acquired

by each of the parties, after their civil marriage. And cannot in any way affect the status of their child.

Prior to the establishment of the Republic, in August, 1960, under its present constitution, the Supreme Court of the Colony of Cyprus would undoubtedly have jurisdiction to entertain a matrimonial cause, arising in this marriage, under section 20(b) of the Courts of Justice Law (Cap. 8) in force at the time.

This being so, the position is now governed by section 19(b) of the present Courts of Justice Law (14 of 1960). And as I said the other day in *Darmanin* v. *Darmanin* (Mat. Pet. 13/61):

> ' Falling, as it does, outside the saving lines of section 19(b) .....
> the petition remains within the exclusive jurisdiction of this Court, in the exercise of the powers which before Independence Day, vested in, and were exercisable by the Supreme Court of Cyprus, under the provisions of sections 20(b) and 33(2) of Chapter 8 '.

Following the decisions in *Herta Iasonos* v. *Iasonos* (Matr. Pet. 14/60); *Phidias Christodoulou* v. *Katerina Christodoulou* (Matr. Pet. 15/61); and other cases to which I need not specifically refer, I hold that the petitioner was entitled to have recourse to the Matrimonial Jurisdiction of this Court, in exercise of which, I have already granted to her by the decree made on October 6th, the remedy sought by her petition, with costs".

The case of *Mantovani* (*supra*) was followed in *Kaprielian* v. *Kaprielian* (1963) 2 C.L.R., p. 143. The husband was an Armenian and a member of the Armenian Apostolic Church of Cyprus, and the respondent a Greek Cypriot and a member of the Greek-Orthodox Church of Cyprus. They were married at the Commissioner's Office, Nicosia, in 1957 under the provisions of the Marriage Law, then Cap. 116, now Cap. 279, and some three and a half months later they went through a religious ceremony in the Armenian Church in Nicosia.

Josephides, J. had this to say on the question of the matri-

monial jurisdiction of this Court under the provisions of section 19(b) of the Law:

" 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 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).

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.....

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 Vassilides 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 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."

In the case of *Dokidou* v. *Dokides* (1971) 1 C.L.R., p. 124, the wife was a citizen of the Republic of Cyprus and a member of the Greek-Orthodox Church of Cyprus. The husband was a Greek citizen and a member of the Greek-Orthodox Church. It was held as to the question of the jurisdiction ratione materiae:

"(1) The marriage is a civil marriage. There was no religious ceremony and it would appear that the Ecclesiastical Tribunal of the Greek Orthodox Church of Cyprus has no competence to hear and determine a matrimonial cause between the parties. (Cf. Article 16 of the 'Procedure of the Ecclesiastical Tribunal' made by the Holy Synod of the Church of Cyprus).

(2) (a) Consequently I am of the view that the only Court which has exclusive jurisdiction in the matter is this Court: See, *inter alia*, the case *Kaprielian* v. *Kaprielian* (1963) 2 C.L.R. 143, at pages 151 and 152.

(b) Another reason for which this Court has jurisdiction in such matters is that Article 111.1 of the Constitution applies only where both parties are citizens of the Republic of Cyprus and members of the Greek Orthodox Church. (See *HjiJovanni* v. *HjiJovanni* (1969) 1 C.L.R. 207 at pp. 228-9)".

In the case of *HjiJovanni* v. *HjiJovanni* (1969) 1 C.L.R., p. 207,

it was held that Article 111.1 of the Constitution read in conjunction with Article 2.3 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.

In the case of *Michael* v. *Michael* (1971) 1 C.L.R. p. 211 the question of the jurisdiction of the Court was examined upon an undefended wife's petition for divorce on the ground of cruelty. The parties were both citizens of the Republic and the husband domiciled in Cyprus. The wife was a Greek Cypriot and a member of the Greek-Orthodox Church, while the husband a Cypriot and a member of the Maronite Church, that is of a religious group to which the provisions of paragraph 3 of Article 2 of the Constitution apply, as well as the provisions of Article 111 of the Constitution.

The parties went through a ceremony of marriage on the 29th May, 1965 at the District Office in Limassol, under the provisions of the Marriage Law, Cap. 279 and on the following day they went through a religious ceremony of marriage in the Greek Orthodox Church. It was held that it would seem that in that case although the parties went through a civil marriage they elected to have their marriage governed by Canon Law applicable to the wife, that is the Canon Law of the Greek-Orthodox Church.

Under Article 22 paragraph 2(a) of the Constitution which applies to mixed marriages and which provides that if the Law relating to marriage applicable to the parties as provided under Article 111 is not the same, the parties may elect to have their marriage governed by the Law applicable to either of them under such Article.

On the evidence adduced it was further held that the Eccleciastical Tribunal of the Greek-Orthodox Church of Cyprus was competent to hear that Matrimonial Cause between the parties and grant a decree of divorce if either spouse could establish one of the grounds of divorce provided by the Charter of the Church. It followed therefore that the Matrimonial Cause between the parties to that case was under Article 111 of the Constitution cognizable by the Eccleciastical Tribunal of the Greek-Orthodox Church and so the jurisdiction of this Court was ousted under the express provisions of section 19(b) of

the Courts of Justice Law, No. 14 of 1960 and the Court could not hear and determine that petition.

This case was followed by *Charakis* v. *Loizou* (1972) 1 C.L.R. 102 in which both parties were Greek Cypriots and members of the Greek–Orthodox Church who went through a ceremony of marriage in the Registry Office of St. Pancras in London on the 23rd September, 1964, and about a month and a half later it went through a religious ceremony of marriage in a Greek–Orthodox Church in Cyprus in accordance with the rights and ceremonies of that Church. That marriage was dissolved by a decree of divorce given to the husband by the Eccleciastical Tribunal of Limassol and the Court made a declaration that the civil marriage was validly dissolved by that decree of divorce, relying on what was decided in the case of *Michael* v. *Michael* (*supra*).

The next case along these lines was that of *Savvides* v. *Skopelitou*, (1979) 1 C.L.R. 113 where again the parties were Cypriots, both members of the Greek–Orthodox Church, who, whilst residing in the United Kingdom for purposes of studies they went through a ceremony of marriage at a Register Office there on the 18th December, 1969 and a month later they were married in the Greek–Orthodox Church of St. Sophia in London. This survey of authorities would not be complete if no reference was made to the case of *Metaxas* v. *Mita* (1977) 1 C.L.R. 1, in which the parties were both citizens of the Republic, members of the Greek–Orthodox Church, permanent residents and domiciled in Cyprus. They went through a civil ceremony at Waltham Forest Register Office in London but they did not go through a ceremony of marriage in accordance with the rights of the Greek–Orthodox Church. A declaration in this case was granted to the effect that this civil marriage was not a valid one and was void ab initio.

As stated by L. Loizou J., at pp. 6–7 of the report

> " It is clear from the above that the provisions of Article 111 relate to the substantive law of marriage applicable to matrimonial cases in which a citizen of the Republic and a member of the church referred to therein is a party and also to provisions relating to the competence of the Court which is to try such a matrimonial case.
>
> The religious ceremony is not, therefore, considered as

a mere form of marriage but as a condition of the essential validity of the marriage without which the marriage is considered as non-existent.

The right to marry is safeguarded by Article 22.1 of the Constitution which is in these terms:

> 'Any person reaching nubile age is free to marry and found a family according to the law relating to marriage, applicable to such person under the provisions of this Constitution.'

It will thus be seen that this right is somewhat restricted in the sense that it has to be exercised in accordance with the law relating to marriage applicable to such person under the provisions of the Constitution."

These last four cases are therefore distinguishable from the previous ones as in all of them both parties were citizens of the Republic ordinarily resident in Cyprus and members of the Greek-Orthodox Church or of a religious group to which the provisions of paragraph 3 of Article 2 of the Constitution apply. Religious groups in the sense of this paragraph are those religious groups whose members being neither members of the Greek Community nor of the Turkish community have opted to belong to the Greek Community. Furthermore they were marriages that were celebrated after the coming into operation of the Constitution and were considered on the facts that under Article 111 were Matrimonial Causes cognizable by a Tribunal of the Church.

In my view the principle that can be discerned from the rest of the authorities, earlier referred to in this judgment, is that when the parties to the present proceedings were married by the Marriage Officer of St. Pancras, London on the 5th September, 1951, long before the coming into operation of the Constitution, they were legally married to each other for all purposes of the Civil Law and the consequences of their marriage could not be dissolved during their life-time except by a valid judgment of divorce. They were, when they left the office of the Registrar of St. Pancras, a legally married couple for all intents and purposes, and each of them acquired the status of a married person. In the words of Vassiliades, J., in *Mantovanis case*

(*supra*) " The fact that they went through a religious ceremony.... later did not in any way alter their status one way or the other. "

Even if, therefore, the Ecclesiastical Tribunal of one of the two parties, or in this case of the Church to which the applicant-husband belongs, is empowered to dissolve the religious marriage of the parties, solemnized in Alexandria about a month after their civil marriage, it cannot really dissolve the marriage of the parties celebrated by a marriage officer in England under the laws of that country. Had their marriage taken place in Cyprus at the time they would have been legally entitled to be married at the Commissioner's Office under the provisions of the Marriage Law, Cap. 279, as same would not be falling within the exceptions provided by sections 34 and 36 of that Law, and as such this Court would have jurisdiction to entertain any cause arising therefrom.

The submission to a consent order for maintenance by the applicant when duly represented by counsel, and after an objection to the jurisdiction of the Court was raised in the opposition, must be taken as far as the factual aspect of this case is concerned, as an admission that all facts that would have been necessary to bring this case within the ambit of Article 111 of the Constitution were lacking. Therefore, as this was a Matrimonial Cause which was not 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, this Court, had under section 19(b) of the Law exclusive original jurisdiction to deal with the matter at the time which before independence would have been heard and determined by it.

Section 40 of the Law cannot be considered in a way as taking away the jurisdiction of this Court given to it by section 19(b) of the Law. There is no inconsistency or repugnancy between the two as section 40 applies only where an Ecclesiastical Tribunal of the Greek-Orthodox Church or of a Church of which the provisions of paragraph 1 of Article 111 of the Constitution apply, would have power to entertain a cause brought by a wife in respect of her marriage. In the present case on the authority of *Mantovani* (*supra*) and the rest of the cases referred to earlier in this judgment and bearing in mind the factual aspect of this case, no such Tribunal would have power to entertain a Matrimo-

nial Cause brought by the respondent in respect of her marriage at St. Pancras.

Subsection 2 of section 40 which is a deeming provision applies only to cases where Article 111 of the Constitution applies and does not and cannot take away any of the exclusive jurisdiction of this Court given to it by section 19(b) of the Law. This is not in fact a new section, as already seen it existed in effect as section 34(a) (i) (aa) of Law Cap. 8.

For all the above reasons this preliminary point of jurisdiction is resolved in favour of the respondent wife with costs.

Having concluded that this Court has and had jurisdiction to entertain the original maintenance application, I intend to proceed with the hearing of this application on the remaining grounds. A date for that purpose will be given by the Registrar in due course.

Order accordingly.