

[VASSILIADES, J.]

PHIDIAS CHRISTODOULOU,

Petitioner,

v.

KATERINA CHRISTODOULOU THEN

KATERINA IOANNOU CHARALAMBOUS,

Respondent.

(*Matrimonial Petition No. 15/61*).

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Matrimonial Causes—Civil marriage solemnized in England—Both parties members of the Greek Orthodox Church of Cyprus—Validity of the marriage is governed by the lex loci celebrationis i.e. the law of England as it stood on the day immediately preceding the coming into force of the Constitution (i.e. on the 15th August, 1960)—By operation of sections 19 (b) and 29 (2) (b) of the Courts of Justice Law, 1960 (Law of the Republic No. 14/1960)—And sections 20 (b) and 33 (2) of the Courts of Justice Law, Cap. 8.

Matrimonial Causes—Validity of a civil marriage solemnized and registered in England under Part III of the Marriage Act, 1949—Parental consent required in cases of an infant party to the marriage—Section 3 of the said Act—Whether the provisions of that section are “directory” or “mandatory”—Whether absence of such parental consent renders the marriage void—Position where the parties to the marriage obtained the required certificate and licence by fraud regarding the consent of one of the parents of the infant party—But irrespective of the above, once a civil marriage has been solemnized under Part III of the Marriage Act, 1949 (supra) “It shall not be necessary in support of the marriage to give any proof that any person whose consent for the marriage was required by section 3 of this Act had given his consent ; nor shall any evidence be given to prove the contrary in any proceedings touching the validity of the marriage”—Section 48 (1) of the said Act.

The question of jurisdiction of the High Court in this case in view of Article 111 of the Constitution, raised at an early stage of these proceedings, was answered in the affirmative (see *Christodoulou v. Christodoulou*, 1962 C.L.R. 68).

The petitioner, a Greek Cypriot domiciled in Cyprus and a member of the Greek Orthodox Church of Cyprus, born in Cyprus in March, 1941, went to England in October, 1956,

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to join his mother. The petitioner met the respondent in England in 1959, who was also a Greek Cypriot girl of the same religion but who took permanent residence in England. Eventually the parties got married in London at the Registry of St. Pancras on the 9th December, 1960, under Part III of the Marriage Act, 1949. At the time of the marriage the petitioner was under 21 years. Therefore, parental consent to the marriage was required by section 3 of the Act. In fact, the petitioner's father did not give his consent to the marriage, his signature on the document adduced to the Superintendent Registrar of the Marriage Register Office as to the father's consent to the marriage being a forgery to the knowledge of both parties. The marriage was consummated and the parties lived as husband and wife for six months.

The petitioner now seeks to have the marriage declared null and void due to the absence of the required parental consent, the signature of his father on the form regarding such consent and adduced to the Superintendent Registrar for the solemnization of the marriage being false :—

VASSILIADES, J., in dismissing the petition :—

Held, (1) the question of jurisdiction, raised quite early in the proceedings, was tried first ; and it was determined in the affirmative for the reasons already given to the effect that the jurisdiction of the High Court is not affected by Article 111 of the Constitution (*Christodoulou v. Christodoulou*, 1962 C.L.R. 68).

2 (a) In exercise of its matrimonial jurisdiction—the jurisdiction conferred by paragraph (b) of section 19 of the Courts of Justice Law, 1960—this Court must apply “ the Law relating to matrimonial causes which was applied by the Supreme Court of Cyprus on the day preceding Independence Day ” (*i.e.* the 15th August 1960) as modified by any law made under the Constitution. The jurisdiction is statutory ; and this is the relevant provision in section 29 (2) (b) of the Courts of Justice law, 1960 (*supra*), now in force.

(b) The Supreme Court of the Colony of Cyprus on the “ day preceding Independence Day ”, in the exercise of its original jurisdiction in matrimonial causes under section 20 (b) of the Courts of Justice Law in force at that time (Cap. 8) applied “ the law relating to matrimonial causes for the time

being administered by the High Court of Justice in England, ” as provided in section 33 (2) of the same Statute (Cap. 8). It is, therefore, clear, in my view, that this case is governed by the Law of England, as it stood on the 15th of August, 1960. The Marriage Act, 1949, as interpreted and applied in England.

(3) Under the *lex loci celebrationis* the consent of petitioner’s both parents was required. Without it, the appropriate officer would have, presumably, declined to issue the necessary licence and certificate for the solemnization of the marriage ; and I must assume that the marriage would not have been solemnized without such documents (certificate with licence) on the 9th December, 1960.

The question upon which this case turns is, in my opinion, whether the fact that the parties to the marriage, acting together, obtained the required certificate and licence by fraud, regarding the consent of one of the parents, is sufficient to render the solemnized marriage void, under the law of England.

(4) (a) In approaching the question for decision, I must first observe that section 16 found in Part II of the Act, applies to marriages according to the rites of the Church of England ; and not to marriages under a Superintendent Registrar’s certificate, in Part III of the Act. I must also bear in mind that the consent in issue, is not the consent of one of the parties to the marriage which would, of course, raise quite different considerations, and going to the root of the matter would directly affect the validity of the marriage. We are here concerned with the consent of one of the parents, which is required for the issue of a certificate or a licence under section 3 of the Act. It is not a consent which may substitute or replace the consent of the party.

(b) Therefore, cases concerning the consent of a party have no bearing on the question in issue. And no case was cited to me by either side where the absence of consent from a parent affected the validity of the marriage of an infant. On the contrary, in a Canadian case *Breen v. Breen* (1923) 3 D.L.R. 600 referred to in Note 134 under the heading : “ Scottish Irish and Commonwealth cases ”, at page 61 of Vol. 27 (the replacement volume of 1952) of the English and Empire Digest, the point was decided in favour of the validity of the marriage.

I have not been able to find the full report in our Library, but the Note in the Digest reads :—

“ Marriage Act, section II requiring the consent of parents to a marriage where a party is under a specified age is di-

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rectory only ; and a marriage is not invalidated by the fact that it was entered into without the required consent, the licence being obtained by means of a false affidavit as to age.”

(5) The absence of authority on the point, in English case law, is fully explained, in my opinion, by reference to section 48 (1) of the Act to which reference is also made in Note (e) at the end of page 84 of Rayden on Divorce (7th Edition) paragraph 35 under the heading : “ Superintendent Registrar’s Certificate, or Certificate and Licence ”.

The material part of section 48 (1) reads :—

“ Where any marriage has been solemnized under the provisions of this part of this Act (Part III) it shall not be necessary in support of the marriage to give any proof—

(a)

(b) that any person whose consent for the marriage was required by section 3 of this Act had given his consent ;

(c)

nor shall any evidence be given to prove the contrary in any proceedings touching the validity of the marriage.”

(6) (a) The evidence called in this case to prove that petitioner’s father had not given his consent to the marriage, was therefore, inadmissible ; and should not have been adduced or received.

(b) Excluding now, as I think I must do, all such evidence, there is nothing left to affect the validity of this marriage.

(7) But even with that evidence on record, reading section 48 together with section 49 and with section 2 and 3 of the Act, I take the view that whatever other consequences the use of that false consent in connection with this marriage, may well have, it cannot affect, in the circumstances of this case, the validity of the marriage, duly solemnized under Part III of the Act, on the authority of a Certificate and Licence issued by the appropriate Superintendent Registrar as it appears on the official certified copy of the entry made in the Marriage Register, admitted by the parties, and attached to the record.

(8) Marriage is a very important social institution, carefully guarded by Domestic as well as by International Law. To use, with all respect, the words of Lord Penzance in *Hyde v. Hyde* (1866) L.R. 1 P & D. p. 130, repeated in *Kassim v. Kassim*

(1962), 3 W.L.R., 865, at page 870) : " Marriage has been well settled to be something more than a contract either religious or civil—to be an institution. It creates mutual rights and obligations, as all contracts do, but beyond that it confers a status."

To say that a duly solemnized and consummated marriage should be declared null and void because one of the parties thereto now seeks to avoid it by recalling the fraud to which he was a party in obtaining the required licence, is a proposition to which I am not prepared to accede.

(9) For the reasons I have just stated I reach the conclusion that the petition must fail ; and it is hereby dismissed.

As to costs, considering respondent's part in the use of the false consent which was the main cause of this litigation, I do not think that she is entitled to costs.

Petition dismissed. No order as to costs.

Cases referred to :

Ponticelli v. Ponticelli (1958) 1 All E.R. 357 ;

Kassim v. Kassim (1962) 3 All E.R. 426 ; (1962) 3 W.L.R. 865 ;

Breen v. Breen (1923) 3 D.L.R. 600, referred to in Note 134 under the heading : " Scottish, Irish and Commonwealth cases ", at page 61 of Vol. 27 (the replacement Volume of 1952) of the English and Empire Digest ;

Hyde v. Hyde (1866) L.R. 1 P & D 130.

Matrimonial Petition.

Petition by husband for declaring marriage null and void because at the time of the marriage the Petitioner was an infant being only nineteen years and nine months old. That no consent of his father was given before or at the time of the marriage. That any document purporting to give such consent and adduced at the registered office for solemnization of the marriage was false and untrue.

Chr. P. Mitsides for the petitioner.

L. N. Clerides for the respondent.

Cur. adv. vult.

The facts sufficiently appear in the judgment delivered by :—

VASSILIADES, J. : This case presents two important, and, in my opinion, rather difficult questions. The first

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is a question of jurisdiction ; and the second a matter affecting the validity of the marriage between the parties.

The question of jurisdiction is : whether this Court can entertain a matrimonial cause whereby a Cypriot husband, member of the Greek Orthodox Church and domiciled in Cyprus, seeks to attack the validity of his civil marriage with a Cypriot girl of the same religion, domiciled in England at the time of marriage, solemnized and registered in England under the Marriage Act, 1949.

The second question, that of validity, is : whether the petitioner is entitled to the prayer of having the marriage declared null and void by reason of a false document regarding his father's consent, used for the purpose of obtaining the required licence for the marriage, the petitioner being an infant of "only 19 years and 9 months' old" at the material time.

The question of jurisdiction, raised quite early in the proceedings, was tried first ; and it was determined in the affirmative. For the reasons given in the considered decision delivered herein on the 25th May, 1962, I reached the conclusion that this Court has jurisdiction to entertain the petition in hand, and that such jurisdiction is not affected by the provisions of Article 111 of the Constitution (*Christodoulou v. Christodoulou*, 1962 C.L.R. 68).

It was after this decision that the case went to trial, mainly on the issue whether the "document purporting to give the consent of the petitioner's father to the marriage, adduced at the Register Office for solemnization of the marriage was false and untrue" as alleged by the petitioner in paragraph 7 of his petition, which allegation was denied by the respondent in paragraph 2 of her answer.

On the evidence before me, which presents no difficulty, I find the facts of the case as follows :

The petitioner who was born in Cyprus in March, 1941, was sent by his father to England in October, 1956, at the age of 15, to join his mother there, where she had gone for treatment a few months earlier, and remained working as a seamstress. The petitioner, then a secondary school student, went to England in order to pursue there further studies and training as an electromechanic. His father, a C.M.C. (Cyprus Mines Corporation), foreman, was helping them from his pay with monthly remittances of £25 to £30.

About 3 years later, in 1959, the petitioner, while still a student, met the respondent, a young Greek Cypriot girl working in London as a hairdresser, whose father had emigrated to England with his family about 10 years earlier and had settled there as a carpenter making England his permanent place of residence and his new domicile of choice. The petitioner was then still living with his mother ; and the respondent with her parents.

The parties became "good friends", according to the petitioner, and about 6 months later they decided to get married. The petitioner managed to persuade his mother to consent to the marriage, but when she wrote to her husband that their son was considering marriage, the father's reply was quite emphatic to the effect that the young man should not think of undertaking any responsibility in that direction, before he completed his studies and was able to earn a living for himself and his future wife.

The matter was not pursued further with the father, but in October, 1960, the parties started taking steps for a civil marriage in England. "We first went to the Marriage Registry at St. Pancras", the petitioner said in evidence. "The Registrar asked for our passports and when he saw that I was under 21 he gave me a form to fill in, and for my father and mother to sign. He fixed a date for me to have the form signed," the petitioner added.

Upon production of the form purporting to contain the consent of the petitioner's both parents to his proposed marriage, the Superintendent Registrar of the Marriage Register Office in the District of St. Pancras of that Metropolitan Borough, (wherein both parties were residing at the time) apparently accepting the form produced to him as duly signed, issued the required certificate with licence whereupon the marriage between the parties was duly solemnized at the Register Office on the 9th of December, 1960, in the presence of three witnesses. The proper entry was then made in the Marriage Register and the parties were issued with a certified copy thereof under No. WD. 321822, was admitted by the litigants and attached to the record herein.

A certified photostat copy of the consent-form in question, produced by the petitioner and admitted by the respondent, was put in evidence as exhibit 1. It was, moreover, proved by the Superintendent Registrar's affidavit, admitted by consent as exhibit 3.

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There is no dispute about the mother's consent to the marriage, or about her signature on the form. It was duly signed by petitioner's mother on the 30th November, 1960, as stated therein. But, on the evidence before me, I find without any hesitation that petitioner's father did not consent to the marriage ; and never signed the form in question.

The evidence does not disclose who wrote the purported signature of the father ; or that of " S. Christodoulou " the witness underneath. But I find as a fact that both parties to this case knew that the form was false in this particular, when, acting in concert, they produced it to the Superintendent Registrar for the purposes of their marriage ; the Officer accepting it and acting upon it in good faith.

After the ceremony at the Registry, the parties lived as husband and wife in England for about 6 months, according to the petitioner, when he deserted the respondent and returned to Cyprus with his mother. The petitioner's father first came to know of this marriage from a letter written to him apparently by the respondent, some time after she became his daughter-in-law. The father's reply to this development, was to discontinue sending money to his wife and son until the former asked for their fare to return to Cyprus, and he sent them £70 for the purpose.

A few months later, the respondent followed her husband to this country and attempted to join him ; but she was not accepted either by her husband or by his family with whom he was now living. They all disputed the validity of the marriage, and eventually had this petition filed.

Answering questions by counsel for the respondent, the petitioner stated from the witness box that the reason for which he wants his marriage annulled is not that his father did not sign the form. It was " because when we lived together for 6 months, he said, I found that we could not get on together. There was such incompatibility of character between us that we would not be able to live as husband and wife ".

It is submitted on behalf of the petitioner that as this marriage was celebrated in England, it is governed entirely by English Law ; particularly by the Marriage Act, 1949. This was not contested by the other side, and I shall accept the submission as correct for the purposes of this case, although counsel for the respondent did raise the point that as far as age is concerned, under the Law of Cyprus,

which is the Law of petitioner's domicile, the petitioner reached full age when he became 18 years old ; and that according to the Canon Law of the Greek Orthodox Church, where the petitioner belongs, he reached marriage age when he was 16.

The point, however, was not pressed ; nor was it sufficiently argued in this case, and I do not propose dealing further with it for the purposes of this judgment.

Under the *lex loci celebrationis* the consent of petitioner's both parents was required. Without it, the appropriate officer would have, presumably, declined to issue the necessary licence and certificate for the solemnization of the marriage ; and I must assume that the marriage would not have been solemnized without such documents (certificate with licence) on the 9th December.

The question upon which this case turns, is, in my opinion, whether the fact that the parties to the marriage, acting together, obtained the required certificate and licence by fraud, regarding the consent of one of the parents, is sufficient to render the solemnized marriage void, under the law of England.

Learned Counsel for the petitioner supported his submission that this question must be answered in the affirmative, by reference to the provisions of section 16 (1) (c) of the Marriage Act, 1949 ; and in his reply he has also referred to sections 3 and 25. He argued that the consent required, is a prerequisite without which the marriage is void.

Counsel for the respondent, on the other hand, submitted, *inter alia*, that the provisions for parental consent being directory and not mandatory, cannot affect the validity of a duly solemnized marriage. He compared, in support of his submission the provisions of section 2 of the Act to those in section 3. And he referred to *Ponticelli v. Ponticelli* (1958) 1 All E.R. page 357 ; and to *Kassim v. Kassim* (1962) 3 All E.R. page 426.

In exercise of its matrimonial jurisdiction—the jurisdiction conferred by paragraph (b) of section 19 of the Courts of Justice Law, 1960,—This Court must apply “the Law relating to matrimonial causes which was applied by the Supreme Court of Cyprus on the day preceding Independence Day” as modified by any law made under the Constitution. The jurisdiction is statutory ; and this is the relevant provision in section 29 (2) (b) of the Courts of Justice Law now in force.

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The Supreme Court of the Colony of Cyprus on the "day preceding Independence Day", in the exercise of its original jurisdiction in matrimonial causes under section 20 (b) of the Courts of Justice Law in force at that time (Cap. 8) applied "the law relating to matrimonial causes for the time being administered by the High Court of Justice in England", as provided in section 33 (2) of the same Statute (Cap. 8). It is, therefore, clear, in my view, that this case is governed by the Law of England, as it stood on the 15th of August, 1960. The Marriage Act, 1949, as interpreted and applied in England.

In approaching the question for decision, I must first observe that section 16 found in Part II of the Act, applies to marriage according to the rites of the Church of England; and not to marriages under a Superintendent Registrar's certificate, in Part III of the Act. I must also bear in mind that the consent in issue, is not the consent of one of the parties to the marriage which would, of course, raise quite different considerations, and going to the root of the matter would directly affect the validity of the marriage. We are here concerned with the consent of one of the parents, which is required for the issue of a certificate or a licence under section 5 of the Act. It is not a consent which may substitute or replace the consent of the party.

Therefore, cases concerning the consent of a party have no bearing on the question in issue. And no case was cited to me by either side where the absence of consent from a parent affected the validity of the marriage of an infant. On the contrary, in a Canadian case *Breen v. Breen* (1923) 3 D.L.R. 600 referred to in Note 134 under the heading: "Scottish, Irish and Commonwealth cases", at page 61 Vol. 27 (the replacement volume of 1952) of the English and Empire Digest, the point was decided in favour of the validity of the marriage.

I have not been able to find the full report in our Library, but the Note in the Digest reads:

"Marriage Act, section II requiring the consent of parents to a marriage where a party is under a specified age is directory only; and a marriage is not invalidated by the fact that it was entered into without the required consent, the licence being obtained by means of a false affidavit as to age".

The absence of authority on the point, in English case law, is fully explained, in my opinion, by reference to section 48 (1) of the Act to which reference is also made in

Note (e) at the end of page 84 of Rayden on Divorce (7th Edition) paragraph 35 under the heading "Superintendent Registrar's Certificate : or Certificate and Licence".

The material part of section 48 (1) reads :

"Where any marriage has been solemnized under the provisions of this part of this Act (Part III) it shall not be necessary in support of the marriage to give any proof—

- (a)
- (b) that any person whose consent for the marriage was required by section 3 of this Act had given his consent ;
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nor shall any evidence be given to prove the contrary in any proceedings touching the validity of the marriage."

The evidence called in this case to prove that petitioner's father had not given his consent to the marriage, was, therefore, inadmissible ; and should not have been adduced or received.

Excluding now, as I think I must do, all such evidence, there is nothing left to affect the validity of this marriage.

But even with that evidence on record, reading section 48 together with section 49 and with sections 2 and 3 of the Act, I take the view that whatever other consequences the use of that false consent in connection with this marriage, may well have, it cannot affect, in the circumstances of this case, the validity of the marriage, duly solemnized under Part III of the Act, on the authority of a Certificate and licence issued by the appropriate Superintendent Registrar as it appears on the official certified copy of the entry made in the Marriage Register, admitted by the parties, and attached to the record.

Before concluding I must acknowledge with gratitude the guidance I found in the cases cited to me by learned counsel for the respondent, especially in *Ponticelli v. Ponticelli (supra)* and *Kassim v. Kassim (supra)* in making my approach to this case. But as they are not in point I have not referred to them.

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Marriage is a very important social institution, carefully guarded by Domestic as well as by International Law. To use, with all respect, the words of Lord Penzance in *Hyde v. Hyde* (1866) L.R. 1 P & D. p. 130, repeated in *Kassim v. Kassim* (1962), 3 W.L.R., 865, at page 870 : “Marriage has been well settled to be something more than a contract either religious or civil—to be an institution. It creates mutual rights and obligations, as all contracts do, but beyond that it confers a status.”

To say that a duly solemnized and consummated marriage should be declared null and void because one of the parties thereto now seeks to avoid it by recalling the fraud to which he was a party in obtaining the required licence, is a proposition to which I am not prepared to accede.

For the reasons I have just stated I reach the conclusion that the petition must fail ; and it is hereby dismissed.

As to costs, considering respondent's part in the use of the false consent which was the main cause of this litigation, I do not think that she is entitled to costs.

Petition dismissed. No order as to costs.