CHRISTAKIS MICHAEL CHRISTOPOULOU AND OTHERS,
Plaintiffs,

v.

MARIA MARIANTHI CHRISTOPOULOU,
Defendant,

and

THE ATTORNEY-GENERAL OF THE REPUBLIC,
Intervening Party.

(*District Court of Nicosia—Action No.* 3394/68).

Will—Formalities of will—Cyprus born, British National, Citizen of Southern Rhodesia, residing in Greece, executing will in Cyprus—Law governing form of will of movables and immovables—Is the Law of Cyprus—The Wills and Succession Law, Cap. 195, *section* 23—*Provisions thereof* imperative *not* directory—*Conflict of Laws—English Common Law.*

Will—Formalities of will—Signature—Meaning—Will consisting of more than one sheet—Sheets signed *by the testator and* initialled by *attesting witnesses—Initials a sufficient subscription—Section* 23(*d*) *of the Wills and Succession Law, Cap.* 195.

Will—Alterations—Filling in ink blank spaces in a typed will—Presumption that blanks were filled in before execution—Alterations after execution—Section 28 *of the Wills and Succession Law, Cap.* 195*—Non compliance with—Alterations ineffectual but will valid.*

Will—Capacity of testator—Material time—Undue influence—Fraud—Meaning of—Burden of proof—Relationship of husband and wife—No presumption of undue influence—Husband's will benefiting wife and wife's relatives to the detriment of husband's blood relatives—Not obtained by influence or fraud of wife.

Domicil—Domicil and residence—Permanent home—Intention—Domicil of origin—Domicil of choice—Change of domicil of origin—Abandonment of domicil of choice—Onus of proof—Ascertainment of domicil—State of mind of propositus—Inferences from deeds and statements—Feeling of sentimental attachment to the land of one's domicil of origin.

1971
Dec. 27
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CHRISTAKIS MICHAEL CHRISTOPOULOU AND OTHERS
v.
MARIA MARIANTHI CHRISTOPOULOU AND ANOTHER

Will—Material validity of a will—Law governing movables lex domicilii*—Law governing immovables* lex loci rei sitae *including the conflict of Laws—Doctrine of renvoi—Disposable portion in Cyprus—Section* 41 *of the Wills and Succession Law, Cap.* 195.

Will—Construction—Repugnancy in wills—Posterior words in a will prevail.

Administration of Estates—Governed by the lex forum.

The litigation in the instant case mainly concerns the validity of the will of the deceased Constantinos Michael Christopoulos which was executed on the 22nd July, 1963. It was commenced at the instance of a number of his blood relatives against his widow who was named executrix in his said will.

The plaintiffs' claim in this action was for—

A. An order of the Court declaring that the will of the deceased Constantinos Michael Christopoulos is void.

B. An injunction against the defendant preventing her from in any way administering or interfering with the estate of the said deceased.

C. An order of the Court appointing plaintiffs 1–4(*b*) as administrators of the estate of the said deceased, and

D. A declaration of the Court that the said Constantinos Michael Christopoulos died domiciled in Cyprus.

In the statement of claim the will was impeached on the grounds that—

(*a*) It was not executed in accordance with the provisions of the Wills and Succession Law, Cap. 195 ;

(*b*) the deceased at the time that the said alleged will purports to have been executed was not of sound mind, memory and understanding ;

(*c*) the execution of the said will was obtained by the undue influence and fraud of the defendant-wife ;

(*d*) in the alternative, that the said will is void for uncertainty, and

(*e*) that the said will is contrary to section 41 (1) (*b*) of the Wills and Succession Law, Cap. 195.

The defendant in her defence resisted and denied the claim and by counterclaim she claimed—

(*a*) A declaration of the Court that the will of Constantinos Michael Christopoulos dated 22.7.1963 is valid and/or legal and/or genuine and/or the only valid will of the said deceased.

(*b*) A declaration of the Court that the said deceased at the time of his death was domiciled in Athens.

(*c*) A declaration of the Court that the defendant is and/or is entitled to be the executrix of the aforesaid will, and

(*d*) An order of the Court appointing the defendant executrix of the said will.

The issues for the determination of the Court in this action fell under the following headings :

A. Formalities of the Will.

B. Was the deceased at the time of the execution of the Will of sound mind, memory and understanding ?

C. Was the will obtained by the undue influence or fraud of the defendant ?

D. Where was the deceased domiciled at the time of his death ?

E. What is the effect of the provisions of section 41(1)(*b*) of the Wills and Succession Law, Cap. 195 ?

F. Is the will void for uncertainty ?

G. Appointment of plaintiffs 1-4(*b*) as administrators of the estate of the deceased.

Regarding issue A. above—*formalities of the will*—the factual position was shortly as follows :

The deceased was born of Cypriot Greek Orthodox parents in Cyprus. He was a British National, citizen of Southern Rhodesia. His habitual residence was Greece. The will was executed in Cyprus and the defendant was propounding the will in Cyprus. There was no evidence before the Court that the law of Southern Rhodesia was different from Cyprus Law with regard to the requisites for the formal validity

of a will. The deceased died possessed of movables situated in Greece, Cyprus and Rhodesia and immovables in Greece, Rhodesia and London. The will was executed in Cyprus on the 22nd July, 1963 and purported to dispose of all his movables and immovables. It was a typed document consisting of 4 sheets. It was signed by the testator at the foot thereof and the signatures of the two attesting witnesses appeared under the attestation clause in the last page. Each sheet (sheets 1, 2 and 3) bear the *signature* of the testator and the *initials* of the two attesting witnesses.

It was contended for the plaintiffs that if the testator signs and the witnesses initial, this is fatal as this falls short of conformity to the provisions of section 23(*d*) of the Wills and Succession Law, Cap. 195 which runs as follows :

" (*d*) If the will consists of more than one sheet of paper, each sheet shall be signed or initialled by or on behalf of the testator and the witnesses."

The plaintiffs' contention was that the testator and the witnesses must sign or all must initial.

Another issue akin to the formalities of the will, was the question of certain alterations appearing therein.

In the third line of the first sheet the words " 22nd July " were written in ink to fill a blank space after the typed words " simeron tin " and before the typed words " 1963, en Lefkosia ".

In the last sheet similarly " 22 an " was written in ink to fill a blank space between the typed words " En Lefkosia " and " Iouliou, 1963 ". The alterations in the will were effected to supply blanks left by the drafter or the persons who typed the will.

There was a third blank space in the certificate of the Certifying Officer of the words " taftin tin " and before " Iouliou 1963 ". These blank spaces were intended for the date or the day of July, 1963 when the will was to be executed.

Issue B—Sound mind, memory and understanding.

At the commencement of the hearing counsel for the plaintiffs abandoned the allegation that the will was executed at a time when the deceased was not of sound mind, memory and understanding.

Issue C—Undue influence and fraud.

In section 2 of the Wills and Succession Law, Cap. 195, "undue influence" and "fraud" are thus defined :

"'undue influence' means the exercise by a person of influence to dominate the will of another person where the relations subsisting between them are such that one of them is in a position to dominate the will of the other and uses that position to obtain an unfair advantage over the other.

'Fraud' includes any of the following acts committed by a person or with his connivance or by his agent, with intent to deceive another person or his agent or to induce him to do any act, that is to say—

(*a*) the suggestion as to a fact, of that which is not true by one who does not believe it to be true,

(*b*) the active concealment of a fact by one having knowledge or belief of the fact,

(*c*) any other act fitted to deceive."

Plaintiff's contentions in the Statement of Claim were as follows :

"(*c*) The execution of the said alleged will was obtained by the undue influence of the defendant.

Substance of the case

The Defendant took advantage of the age of the testator and of his weak and excitable state and knowing that his memory was greatly impaired, induced him to make the said will. The influence of the defendant over the testator was so complete that he was not a free agent and the said alleged will was not the offspring of his own volition but was obtained by the importunity of the defendant.

(*d*) The execution of the alleged will was obtained by the fraud of the defendant.

Substance of the case

The defendant took advantage of the age of the testator and of his weak and excitable state and by false representations as to the character and/or behaviour of the plaintiffs or any one of them she prevented the testator from benefiting his relatives."

In resolving this issue the Court, *inter alia*, took into consideration the following facts :

The defendant-wife was born in Egypt in 1928 from a poor family ; she received secretarial education at Portsaid and in 1948 she emigrated to Cyprus. She took up employment with N.A.A.F.I. at £30 per month. In 1955 she married the deceased who was 21 years older than her. The deceased who at the time was in his late forties, was well established in life because hard work in a foreign African country brought to him wealth. The 21 years' difference of age did not weigh in the mind of the defendant against that union. After the marriage she accompanied her husband to Rhodesia.

The deceased, after his marriage to the defendant was estranged from most of his blood relatives and he leaned towards his wife's family. The brother of the wife was helped to emigrate to Rhodesia. It was to him that the deceased's business was sold in 1961. The mother-in-law was receiving remittances from the deceased. The deceased, when in Cyprus, stayed at the relatives of the defendant and did not even meet his own brothers or sisters. Further, in his will of the 22nd July, 1963, there was a marked decrease of the amounts the deceased had bequeathed to his relatives by an earlier will made on the 24th May, 1963. A mere perusal of the will showed glaringly how favourable was the treatment of the relatives—the mother—of the defendant, not to mention the wife herself.

It was further submitted on behalf of certain of the plaintiffs that the deceased committed illegalities in his endeavour to avoid payment of income tax in Rhodesia and has also acted against the Exchange Control Regulations of that country in accumulating 32,000 dollars in New York a city outside the sterling area. And the defendant who performed the duties of the secretary, book-keeper and cashier of the deceased, knew of those illegalities and with threats of exposing him, kept him under her control. The couple had no children and on the totality of the evidence before the Court they were leading a happy and harmonious life with the exception of an incident in 1965. The Court was unable to say whether the couple had any troubles which they did not disclose. There was no evidence to show that the wife knew that he was making his will. None of the plaintiffs, who blame the defendant, ever attempted to meet their brother or even to communicate with him. They entrenched themselves

and out of pride, as they stated, they avoided him. Soon after the marriage of the deceased prejudices were created, but the plaintiffs were not unblemished of what followed. No particular instances and no act of the defendant tending to prove plaintiffs' allegations against the defendant were stated. The evidence pointed to the contrary. The picture the Court had of the deceased was that of an educated business man who could not be harnessed by his wife. He was the boss in his home. He did not transfer any property during his life time in defendant's name.

Issue D—Domicil.

In resolving this issue the Court considered, *inter alia*, the following facts :

The deceased was born in Nicosia of Cypriot Greek Orthodox parents on 10.2.1907. He graduated the Pancyprian Gymnasium. On the 6th January, 1926 he left Cyprus for Sudan. On the 22nd March, 1934 he returned to his native land but in the following year he departed for the Union of South Africa. After a short stay there, he moved to Southern Rhodesia. In this country hard work and good lack brought him sufficient wealth. The deceased, however, was attached to his relatives in Cyprus and his native land ; and in his letters he expressed his desire and intention to return and settle in Cyprus. He returned to Cyprus for the first time after 1935 on the 22nd July, 1953. In February, 1954 he betrothed to the defendant and on the 29th November of the same year he opened a current account with the National Bank of Greece—Nicosia Branch—and lodged on that day £2,549.320 mils. He gave to the Bank his Southern Rhodesia address. During this visit he purchased his only immovable property in Cyprus, a building site which he sold in 1963. On the 7th July, 1955 he married to the defendant and on the 14th October, 1955 the couple left for Southern Rhodesia where the deceased had a flourishing business and owned a house 100 miles away from the town. The defendant's allegation was that the couple left Cyprus in order to live in South Rhodesia permanently, but that they would visit Cyprus whenever his business would permit.

During the period from 1955 to 1957 the deceased continued to make lodgments in his Bank account in Nicosia ; the amount standing to his credit on the 21st February, 1957

was £17,943. In this connection the Court paused the question : Why was a person, who intended permanently to reside at South Rhodesia, intending to abandon his domicil in Cyprus, remitting money to Cyprus ?

The deceased stayed in South Rhodesia for 5 consecutive years until 1960 when for health reasons he travelled to Europe. He was found suffering from insufficiency of heart and the doctor advised permanent rest. They arrived in Cyprus on the 18th August, 1960. When in Cyprus the deceased made up his mind and expressed his such intention to his wife to settle in Greece. He returned to Rhodesia in 1961 where he sold his business to defendant's brother and shipped their furniture and household to Piraeus. On the 11th October, 1961 the couple was back to Cyprus. They left Rhodesia intending not to return to that country. In January, 1962 the deceased went to Athens ; on the 6th February, 1962 he acquired a house there and on the 15th February, 1962 he took over possession of the house. He lived in that house ever since. There in Greece the deceased must have had a happy life of the standard he was in need of at his age. He gave instructions to his bankers in Rhodesia to remit to him the money he was allowed by the Exchange Control Laws of that country to Athens. He purchased in Greece fields which could be developed into building sites.

Various witnesses deposed that the deceased made to them statements of intention to stay in Greece or Cyprus. These statements were conflicting : For there was evidence to the effect that the deceased declared that he intended to return to Cyprus and pass his last years in Cyprus ; and evidence that he settled permanently in Athens and that he was content with his life there.

The evidence of 5 defence witnesses tended to prove statements of the intention of the deceased to make Athens or that he had Athens his permanent home or settled home with that intention which is required for the acquisition of a domicil of choice. The Court accepted the substance of the evidence of these defence witnesses though it was not satisfied that the actual words they used in Court was the actual wording of the deceased. On the other hand declarations as to his intention to return to Cyprus, even if true, were conflicting. In this connection the Court said that it was not unnatural or improbable for a person in casual conversation with different persons and at different times

to make conflicting statements ; in the opinion of the Court this is what happened with the deceased. As, however, the deceased did not do anything to substantiate or fortify or carry into effect his alleged intention of returning to Cyprus, the Court treated these declarations as utterances of the deceased not meant by him and not expressing his real intention ; they were inconsistent with his actions.

Issue E—Effect of the provisions of section 41(1)(*b*) *of the Wills and Succession Law, Cap.* 195.

It was alleged in the Statement of Claim that the will was contrary to the said section 41(1)(*b*) because by his said will the deceased disposed of all his movable and immovable property of which he died possessed. Section 41 (1) (*b*) provides as follows :

" 41(1) Same as in section 42 of this Law provided, where a person dies leaving—

" (*a*) . . . . . .

(*b*) a spouse or a father or a mother, but no child nor descendant thereof, the disposable portion shall not exceed one-half of the net value of his estate."

Evidence of an expert on Greek Law was heard and was to the effect that the law governing the succession of aliens is the law of their nationality and by law of nationality is meant the Municipal Law excluding the conflict of laws. The expert further stated that this is the combined effect of Articles 28 and 32 of the Greek Civil Code. Hence the law of the deceased's domicil looks to or sends back to the country of allegiance but the country of allegiance sends back (renvoyer) the decision to the country of domicil. Thus there is an inextricable circle " in the doctrine of renvoi " and no result is reached.

Another issue—*issue F*—which was determined by the Court was whether *the will was void for uncertainty.*

In this connection it was contended by the plaintiffs that the will was void for uncertainty as—

(*a*) the last paragraph of clause 1 of the said will is inconsistent with the remaining paragraphs ;

(*b*) the residue of the estate of the said deceased is purported to be donated to two different establishments in different parts of the alleged will ;

(*c*) no provision is made for the ultimate disposition of the residue in the event of the named executrix failing to comply with the testator's alleged wishes.

The last issue resolved by the Court—*issue G*—was plaintiff's claim for an order of the Court appointing plaintiffs 1–4(*b*) as administrators of the estate of the deceased.

Held, I. On *issue A*.—Formalities of the will—after stating the law on the matter :

1 (*a*) *As to the Law governing form of the will.*

The law of Cyprus, namely section 23 of the Wills and Succession Law, Cap. 195 governs the form of the Will.

1 (*b*) *As to the signature and initials on the will.*

We hold the view that if each sheet is signed by the testator and initialled by the witnesses the requirements of section 23(*d*) of the Wills and Succession Law (*supra*) are satisfied.

1 (*c*) *As to the alterations appearing in the will.*

(*a*) By analogy of the statement of the law with regard to legacies and amounts, we are of the view that it must be presumed and we do presume that the alterations, *i.e.* the filling up of the blank space by the insertion of the date " 22an Iouliou " in the first page and " 22an " in the fourth page, were effected before execution : But even if we were to hold that they were inserted after execution the provisions of section 28 of the Wills and Succession Law, Cap. 195 were followed. This is evident from the three initials, those of the testator and the two subscribing witnesses appearing on the first and last sheets opposite and near the alterations.

(b) Non compliance with section 28 does not invalidate the will but renders ineffectual the alterations which in this will are insignificant.

(*c*) We are satisfied that the will, in form, fully satisfies the requisites provided by our law.

Held, II. On *issue C*—Undue influence and fraud—after stating the law (*Note : Issue B* was abandoned by the plaintiffs).

The influence and fraud must relate to the will. The legacies and the will might create a hypothesis of such influence or fraud. But we cannot exclude that the deceased of his own free will without any influence or fraud, wished to benefit the persons with whom he was pleased and only because of the blood relationship left "something" to his brothers and sisters. This is more consistent with the facts proved before us. We find that the will was not obtained by the influence or fraud of the wife.

Held, III. With regard to *issue D*—Domicil—after an elaborate statement of the law.

1. On the totality of the evidence before us, we are of the view and so hold that the deceased's domicil of origin was Cyprus. In October, 1961 the domicil of the deceased was still Cyprus.

2. In 1962 he moved to Greece. Then or subsequently he formed the intention of making Greece his permanent home in substitution for and to the exclusion of Cyprus.

3. The evidence unequivocably indicates that the deceased at the time of his death both physically and spiritually had *Greece* as his chosen settled or permanent home. We do find as a fact that the deceased at the time of his death was domiciled in Greece.

Per curiam :

A feeling of sentimental attachment to the land of one's domicil of origin, is not sufficient for the retention of that domicil, nor is a floating intention to return to the country of his origin.

Held, IV. On *issue E*—effect of the provisions of section 41(1)(*b*) of the Wills and Succession Law, Cap. 195.

1. The law of nationality of the *de cujus* in this case being the law of Southern Rhodesia the law governing the succession to his movables is the law of that country.

2. As his immovables are situated in Greece, England and Southern Rhodesia it follows that the *lex situs*, is the law of England for the immovables in England and the law of Southern Rhodesia for the immovables in Greece and Southern Rhodesia. These are foreign laws to us and we have no evidence of the state of the law in Southern Rhodesia. We

shall not embark on a fruitless consideration of the law governing the succession to the movable and immovable property of the *de cujus*.

3. It is clear that if the law applicable was the law of this country, the testator was not entitled to dispose more than one-half of the net value of his estate, and, therefore, any disposition in excess should be reduced and abated proportionately so as to be limited to the disposable portion, but the law of Cyprus does not apply. We may say with certainty that the law of Greece and Cyprus are not applicable in this case.

Held, V. On *issue F*—whether the will is void for uncertainty.

1. It is established law that a will of movables is interpreted and the will receives effect in accordance with the law intended by the testator. In the absence of indications to the contrary, this is presumed to be the law of his domicil at the time when the will is made (Dicey & Morris, Conflict of Laws, 8th ed. p. 605).

2. Similarly the Court will construe a will of immovables in accordance with the intention of the testator ; unless, however, an intention to the contrary on the part of the testator is established, the construction of a will of immovables is governed by the *lex loci rei sitae*. The deceased did not express in his will the intention that his will shall be construed in accordance with any system of law.

3. We see no repugnancy between the last paragraph of clause 1 and the remaining will. By that paragraph the testator purported to dispose not the residue *of his estate*, but the balance of his property described in clause 1(*a–e*). He only made provision in his will for the substitution of one legatee for another legatee in the event of the death of his wife within 60 days of his own deceased. (Section 30 of the Wills and Succession Law, Cap. 195).

4. Even if there were contradictions, this would not frustrate the will. " It has become an established rule in the construction of wills, that where two clauses or gifts are irreconcilable, so that they cannot possibly stand together, the clause or gift which is posterior in local position shall prevail the subsequent words being considered to donate a subsequent intention : *Cum dum inter se pugnantia veperiuntur in testamento, ultimum ratum est* ". (Jarman on Wills, 8th ed. Vo. I, p. 576).

Held, VI. On *issue G*—plaintiffs' claim for an order of the Court appointing plaintiffs 1–4(*b*) as administrators of the estate of the deceased.

1. The administration of estates is governed by the *lex forum.*

2. We found that the will is the free and valid will of the deceased Constantinos Michael Christopoulos who died in Nicosia on the 4th May, 1968, but was domiciled in Greece. The will is not void for uncertainty and the dispositions made therein are not governed by the laws of this country. The defendant is the widow of the deceased and the named executrix. Even if Christopoulos died intestate, according to the Administration of Estates Rules, 1955 the defendant had the right and the priority to be appointed administratrix. We see no reason why the will should not be proved and the volition of the deceased not to be executed.

Held, VII. In the result :

1. Action is dismissed.

2. Judgment as per prayers 10 (*a*) (*b*) (*c*) and (*d*) of the counterclaim.

3. Costs of all advocates who appeared in the case should be paid out of the estate.

Action dismissed. Judgment as per counterclaim ; order for costs as above.

Cases referred to :

Moultrie v. *Hunt* (1861) 23 N.Y. 394 ;

Patiki v. *Patiki*, 20 C.L.R. Part I p. 36 ;

Bremer v. *Freeman* [1857] 10 Moo. P.C. 306 ;

Choppin v. *Choppin* [1725] 2 P. Wms 291 ; 24 E.R. 735 ;

Charalambous & Others v. *Demetriou & Others*, 1961 C.L.R. 30 ;

In the Goods of Blewitt [1880] 5 P.D. 116 ;

Hindmarsh v. *Charlton* (1961) H.L. Cas. 160 ;

In Re Chalcraft (deceased) *Chalcraft* v. *Gile's and Another* [1948] 1 All E.R. 700 ;

In the Goods of Christian [1849] 2 Rob. Eccl. 110 ;

Banks v. *Goodfellow* [1861–1873] All E.R. Rep. 47 ;

Greenwood v. *Greenwood*, 163 *E.R.* 930 at p. 943 ;

Boyse v. *Rossborough* [1843–1860] All E.R. Rep. 610 at p. 614 ;

Panayiota Mosaikou v. *Zehra Eren*, 23 C.L.R. 286 at p. 291 ;

Graig v. *Lamourex* [1920] A.C. 349 ;

Wingrove v. *Wingrove* [1855] 11 P.D. 81 ;

Williams v. *Goude* [1828] 1 Hag. Eccl. 577 ;

Bary v. *Butlin* [1838] 2 Moo. P.C. 480 ;

Parfitt v. *Lawless* [1872] L.R. 2 P. & P. 462 ;

Henderson v. *Henderson* [1965] 1 All E.R. 179 at p. 180 ;

Flynn v. *Flynn* [1968] 1 All E.R. 49 at p. 52 ;

Bell v. *Kennedy*, L.R. 1 Sc. & Div. 307 at p. 310 ;

Udny v. *Udny*, L.R. 1 Sc. & Div. 441 at p. 455 ;

Winans v. *Attorney-General* [1904–1907] All E.R. Rep. 410 at pp. 412 and 413.

Wahl v. *A.-G.* [1932] All E.R. Rep. 922 at p. 924 ;

Traverse v. *Holley and Holley* [1953] 2 All E.R. 794 at p. 797 ;

Harrison v. *Harrison* [1953] 1 W.L.R. 865 ;

Scappaticci v. *The Attorney-General* [1955] 1 All E.R. 193 ;

Ross v. *Ellison* (*or Ross*) [1930] A.C. 1 at p. 6 ;

Platt v. *A.G. of New South Wales* [1878] 3 App. Cas. 336 at p. 344 ;

Concet v. *Googhegan* [1878] 9 Ch. D. 458 ;

Re Annesley, *Davidson* v. *Annesley* [1926] Ch. 692 ;

Re Ross, *Ross* v. *Waterfield* [1930] 1 Ch. p. 377 ;

Re Askew, *Marjoribanks* v. *Askew* [1930] All E.R. Rep. 174 ;

Re Johnson, *Roberts* v. *Attorney-General* [1903] 1 Ch. 821 ;

Re Duke of Wellington, *Glentanan* v. *Wellington* [1948] Ch. 118 (C.A.) ; [1947] 2 All E.R. 854 ;

Doe d. Leicester v. *Biggs* [1803–1813] All E.R. Rep. 546 at p. 548 ;

Attorney-General v. *Matthews*, 2 Lev. 162 ;

Re Brown [1888] 1 Tr. R. 423 ;

Weir v. *Crum-Brown* [1908] A.C. 162 ;

Re Davis, *Hannen* v. *Hillyer* [1900–1903] All E.R. Rep. 336 ;

Mills v. *Farmer* [1815] 1 Mer. 55 at p. 94 ;

Re Rymer [1895] 1 Ch. 19.

A. Triantafyllides, for plaintiffs 2, 4(*a*), (*b*) and (*d*).

A. Dikigoropoullos, for plaintiffs 1, 3, 4(*c*) and (*e*).

C. Glykys with *E. Efstathiou*, for the defendant.

A. Evangelou, for the Attorney-General and as an Intervening Party.

The facts sufficiently appear in the judgment of the Court which was delivered by :

STYLIANIDES, AG. P.D.C. : Constantinos Michael Christopoulos was born in Nicosia of Greek-Cypriot parents in 1907, graduated the Pancyprian Gymnasium and in January, 1926 emigrated to Sudan. Later he proceeded further to Rhodesia where he embarked successfully in commerce and blessed by fortune and through hard and conscientious labour he made a fortune.

In 1955 he married to the defendant who, at the time, was a N.A.A.F.I. employee and 21 years younger than him. The couple lived for five years together n Rhodesia, but due to ill health of the husband, he decided to abandon for ever Rhodesia.

In the early 1960s Christopoulos acquired a house in Athens where the couple resided. Late in April, 1968, he travelled to the country of his origin where he passed away on 4.5.1968, leaving considerable property in Cyprus, Greece, Rhodesia and London. Three days after his death the defendant flew to Athens and returned with a copy of an instrument purporting to be a copy of the last will and testament of the deceased dated 22nd July, 1963 in which she was the named executrix.

On 9.5.1968 the wife filed Probate Application 175/68 in the District Court of Nicosia for probate of the said will.

On 21.5.1968, Christakis Michael Christopoulos, Telemachos Christopoulos, Irene Zacharoudhi, Eleni Michaelidou, Eleni Costa HjiSavva, Irene Demetriadou, Polyxeni Christopoulou, Gavriella Theodorou, Yiannis Christopoulos, Andreas Christopoulos and Michalakis Christopoulos entered a caveat.

On 19. 8. 1968 most of the caveators filed this action whereby they impeach the said will. In the amended statement of claim they prayed for —

A. An order of the Court declaring that the alleged will of the said deceased is void.

B. An injunction against the defendant preventing her from in any way administering or interfering with the estate of the said deceased.

C. An order of the Court appointing plaintiffs No. 1—4 (b) as administrators of the estate of the said deceased, and

D. A declaration of the Court that the said Constantinos Michael Christopoulos died domiciled in Cyprus.

In the body of the statement of claim the will was impeached on the grounds that —

(*a*) it was not executed in accordance with the provisions of the Wills and Succession Law, Cap. 195 ;

(*b*) the deceased at the time that the said alleged will purports to have been executed was not of sound mind, memory and understanding ;

(*c*) the execution of the said will was obtained by the undue influence and fraud of the defendant ;

(*d*) in the alternative, that the said will is void for uncertainty, and

(*e*) that the said will is contrary to section 41 (1) (b) of the Wills and Succession Law, Cap. 195.

Particulars of the substance of the case are given as provided by the Administration of the Estates Rules, 1955.

The defendant by her defence resisted and denied the claim and by counterclaim she claimed —

(*a*) a declaration of the Court that the will of Constantinos Michael Christopoulos dated 22.7.1963 is a valid and/or legal and/or genuine and/or the only valid will of the said deceased.

(*b*) A declaration of the Court that Constantinos Michael Christopoulos at the time of his death was domiciled in Athens.

(*c*) A declaration of the Court that the defendant is and/or is entitled to be the executrix of the aforesaid will, and

(*d*) An order of the Court appointing the defendant executrix of the said will.

The case was set down for hearing, but before the commencement of the hearing, H.H. the Attorney-General of the Republic by application of 17.2.1971, applied for leave of the Court permitting him to intervene and appear in the action in view of the interest of the State in connection with the domicil of the deceased and the right of the Republic of Cyprus under the Estate Duty Law. That application was granted by the Court.

The claim and counterclaim were tried together.

The plaintiffs called 10 witnesses and 13 witnesses testified for the defence. The Intervening Party adduced no evidence. Not less than 36 voluminous *exhibits* were produced.

The issues for the determination of the Court in this action fall under the following headings :—

A. Formalities of the will.

B. Was the deceased at the time of the execution of the will of sound mind, memory and understanding ?

C. Was the will obtained by the undue influence or fraud of the defendant ?

D. Where was the deceased domiciled at the time of his death ?

E. What is the effect of the provisions of section 41 (1) (b) of the Wills and Succession Law, Cap. 195 ?

A. *Formalities of the Will* :

The essence of a will is that it is ambulatory until death, a mere inchoate transaction having no legal significance and creating no vested rights until consummated by death. (*Moultrie* v. *Hunt* (1861) 23 N.Y. 394 (American) Lorenzen, Cases on Conflict of Laws, p. 819).

The various systems of law prescribe formalities for the validity of a will.

What is the law governing the form of the will of the late Christopoulos ? The deceased was born of Cypriot Greek Orthodox parents, in Cyprus, when this country was part of the Ottoman Empire governed, however, by virtue of a Convention by the Imperial Government of Britain. In 1925, he acquired British nationality under the Cyprus Annexation Order in Council 1917 (*vide* passports *exhibit* 9 (a), (b) & (c) and evidence of P.W.4). Later, however, he became a British subject and a Southern Rhodesian citizen

in terms of the citizenship of Rhodesia and Nyasaland and British Nationality Act, 1957. (*Vide* passport *exhibit* 9 (b) and 9 (e)). He retained this nationality throughout his life. His residence, according to passport, *exhibit* 9 (e) dated 25.9.1964 and all other evidence before us, is Greece. His nationality at the time of his death is British, but he was most " closely connected " with Southern Rhodesia, as most of his property was situated in that country (as the values in *exhibits* Nos. 20, 21 & 22 reveal).

The deceased died possessed of movables situated in Greece, Cyprus and Rhodesia and immovables in Greece, Rhodesia and London. The will was executed on 22.7.1963 and purports to dispose of all his movables and immovables.

The Wills and Succession Law, Cap. 195, is our only statutory provision. Section 5 reads :—

" This law shall regulate —

(*a*) the succession to the estate of all persons domiciled in the Colony ;

(*b*) the succession to immovable property of all persons not domiciled in the Colony."

Section 12 reads :—

" Succession to movable property of persons dying in the Colony but not domiciled there shall be regulated by the law of the country in which they had their domicil at the time of their decease."

We hold the view that the Wills and Succession Law, Cap. 195, regulates the succession to movable property of all persons domiciled in this country and to immovable property situate in Cyprus.

We shall have occasion in this judgment to decide the domicil of the deceased at the time of his death.

That part of the Private International Law which was incorporated in Cap. 195, is in line with the English principles. The English Common Law is applicable in this country. (Courts of Justice Law 14/60 s. 29 (c)).

In *Patiki* v. *Patiki*, 20 C.L.R., Part I, page 36, Zannetides, P.D.C., as he then was, at page 45 said :—

" While at this point, we must state that the principles of English Private International Law are part and parcel of the English Common Law and applicable here."

This pronouncement was upheld by the Supreme Court (page 50 of the same report, judgment of Griffith Williams, J.)

MOVABLES : As to the form of the testament the English Common Law compelled the testator to adopt the form prescribed by the *lex domicilii*. The *lex domicilii*, in accordance with which the English Law requires that a will should be made, is the law of the testator's domicil at the time of his death.

Lord Wenslaydale, in delivering the judgment of the Court in *Bremer* v. *Freeman* [1857] 10 Moo. P.C. 306 at p. 358, said :

> " The post-mortuary distribution of the effects of a deceased person must be made according to the law of his domicil at the time of his death, if he dies without a will ; and it seems equally to follow that if the law of that country allowed him to make a will, the will must be in the form and with the solemnities which the law required."

And at page 359 :—

> " Their Lordships, however, do not wish to intimate any doubt, that the law of the domicil at the time of the death is the governing Law."

IMMOVABLES : With regard to wills of immovables, the rule of the Common Law is that it is the *lex situs*, and the *lex situs* exclusively which decides whether the appropriate formalities have been observed. In *Choppin* v. *Choppin* [1725] 2 P. Wms 291 ; 24 E.R. 735 it has been held that a devise which was valid by the *lex domicilii* of the testator was ineffectual to pass English land, since it was not attested by three witnesses as required by the Statute of Frauds.

The deceased died domiciled in Greece or Cyprus.

The succession of foreign nationals in Greece is governed by the law of the nationality of the deceased (Astikos Kodix (Civil Code), *exhibit* No. 29, Article 28, evidence of D.W. 4 Costaropoullos and *exhibit* No. 20, 2nd Sheet). Article 32 of the Greek Civil Code adopts the theory of partial or single renvoi. The law of nationality is restricted by Article 32 to the domestic law and excludes the Rules of Conflict of Laws.

The decision in the case of *Bremer* v. *Freeman* (*supra*) gave rise to to Wills Act, 1861, (*exhibit* No. 25) frequently called Lord Kingsdown's Act.

The effect of the first section of this Act is that, whatevet the domicil of the testator at the time of making the will or at the time of death, any will made by a British subject out of the U.K. is valid, so far as concerns personal estate, provided that it is made according to the forms required by any of the following systems of law :—

(*a*) the law of the place of execution, or,

(*b*) the *lex domicilii* at the time of execution, or

(*c*) the law in force at the time of execution in that part of H.M.'s dominions where the testator has his domicil of origin.

This Act was repealed by the Wills Act, 1963. The Wills Act, 1963 (*exhibit* 27) provides a general rule as to when a will shall be treated as properly executed and gives effect to the Fourth Report of the Private International Law Committee and to a Draft Convention on the Formal Validity of Wills made at the Hague in 1961.

Section 1 reads :—

" 1. *General rule as to formal validity.*—A will shall be treated as properly executed if its execution conformed to the internal law in force in the territory where it was executed, or in the territory where at the time of its execution or of the testator's death, he was domiciled or had his habitual residence, or in a state of which, at either of those times, he was a national."

Section 2 (a) provides that a will so far as it disposes of immovable property, if its execution conforms to the internal law in force in the territory where the property is situated shall be treated as properly executed.

If the testator is a national of a composite state comprising many countries, like the Commonwealth or is a citizen of the United Kingdom and Colonies, there is an obvious difficulty in ascertaining his nationality for the purposes of the Act. (Dicey & Morris, The Conflict of Laws, 8th Edition, page 598). Section 6 (2) (b) attempts to solve this problem. It provides as follows :—

" 6 (2) (*a*) If there is in force throughout the territory or State a rule indicating which of those systems of internal law can properly be applied in the case in question, that rule shall be followed ; or

(*b*) if there is no such rule, the system shall be that with which the testator was most closely connected

at the relevant time, and for this purpose the ' Relevant time ' is the time of the testator's death where the matter is to be determined by reference to circumstances prevailing at his death, and the time of execution of the will in any other case."

J.H.C. Morris in the 8th edition of the Conflict of Laws at page 599, wrote :—

" So far as section 6 (2) (b) of the Act is concerned, it may well be asked, with what system of law within a composite State ' most closely connected ' other than the law of his domicil or habitual residence ? The answer may be, the system of law in force in that part of the State where most of his property is situated."

And at page 598 :—

" ' Habitual residence ' is an expression which, though it has been used before in English statute, still awaits authoritative exposition. It does not necessarily mean the same thing as ' ordinary residence '. One may hazard the ' guess ' that ' habitual residence ' will be interpreted to mean much the same as domicil, minus the artificial elements in that concept, and minus the stress now placed on the element of intention in domicil."

In the present case the deceased was a British national, citizen of Southern Rhodesia. He was residing and we venture to say at this stage that his " habitual residence " was Greece. The will was executed in Cyprus. The defendant propounds the will in this country. She applied to the District Court of Nicosia by application 175/68 for probate of the said will. There is no evidence before us that the law of Southern Rhodesia is different from our law with regard to the requisites for the formal validity of a will.

In view of all we endeavoured to explain, we are of the view that the law of Cyprus governs the form of the testamentary instrument in question. Section 23 of Cap. 195 reads :—

" No will shall be valid unless it shall be in writing and executed in manner hereinafter mentioned, that is to say —

(*a*) it shall be signed at the foot or end thereof by the testator, or by some other person on his behalf, in his presence and by his direction ; and

(*b*) such signature shall be made or acknowledged by the testator in the presence of two or more witnesses present at the same time ; and

(*c*) such witnesses shall attest and shall subscribe the will in the presence of the testator and in the presence of each other, but no form of attestation shall be necessary ; and

(*d*) if the will consists of more than one sheet of paper, each sheet shall be signed or initialled by or on behalf of the testator and the witnesses."

In *Anastassis Charalambous & Others* v. *Alkis Demetriou & Others*. 1961 C.L.R. p. 30, it was held that the requirements in the said section were meant to be imperative and not directory. Triantafyllides, Acting J. as he then was, had this to say at page 39 :—

> " Unfortunately by means of the definition of ' will ' in section 2 of Cap. 195, the Wills and Succession Law, and of the rigid wording of section 23 of the same law, a procrustean legal framework has been created to which, no matter what the collateral circumstances, a will has to be fitted, otherwise it cannot survive in a Court of law."

Mr. A. Triantafyllides for his clients plaintiffs, made the following statement at page 98 of the record :—

> " I would like to state, at this stage, that regarding the formality of the will I admit only that the persons who appear as witnesses thereon are the persons who were actually present at the time and that the deceased signed in their presence and in the presence of each one of them and that they signed in the presence of each one of them in the presence of the deceased, but I reserve my right to challenge the formality of the will on any other point on which I may deem fit to rely."

This statement was adopted by Mr. Dikigoropoullos for the other plaintiffs.

The will in question was produced by D.W.1, N. Euripidou, the Probate Registrar of this Court, and is *exhibit* No. 10. It is a typed document consisting of four sheets. It is signed by the testator at the foot thereof and the signatures of the two attesting witnesses appear under the attestation clause in the last page. Each sheet (sheets 1, 2 & 3) bear the signature of the testator and the initials of the two attesting witnesses. The meaning of " signature "

is not free of authority. " Signature " is a sign or mark impressed upon anything ; a stamp or a mark ; the name of a person written by himself either in full or by initials as regards his Christian name or names, and in full as regards his surname or by initials only. (Wharton's Law Lexicon, 14th Edition).

In the *Goods of Blewitt* [1880] 5 P.D. 116 it was decided that initials placed alongside certain interlineations in a will were acceptable as a signature. In the course of his judgment in that case, Sir James Hannen, P., cited the language of members of the House of Lords in the earlier case of *Hindmarsh* v. *Charlton* [1861] H.L. Cas. 160, which, he said at p. 117 " seems equally applicable to the testator's signature, as to the witnesses' subscription."

Lord Chelmsford in the same case at page 117 says :—

> " The subscription must mean such a signature as is descriptive of the witness, whether by a mark or by initials, or by writing a name in full."

The above were cited with approval by Wilmer, J. in *Re Chalcraft (deceased) Chalcraft* v. *Gile's and Another* [1948] 1 All E.R. p. 700.

In Halsbury's Laws of England, 3rd Edition, Vol. 39, we read :—

> " 1326. *Methods of signature.* A mark or initial are sufficient if intended to represent a signature, even though the testator's hand is guided in making it .....
>
> 1337. *Methods of attestation.* To make a valid subscription a witness must either write his name or make some mark intended to represent his name. A will may be subscribed by marks even though the witnesses are capable of writing.
>
> *Initials of an attesting witness are a sufficient subscription.*"

The authorities given for the last statement are *In the Goods of Christian* [1849] ; 2 Rob. Eccl. 110 and *In the Goods of Blewitt* [1880] 5 P.D. 116.

It was contended for the plaintiffs that if the testator signs and the witnesses initial, this is fatal as this falls short of conformity to the provision of s. 23 (d). The testator and the witnesses must sign or all must initial.

We have given due and serious regard to the wording of this paragraph (*d*), but we are unable to agree with this

submission which, we confess, is very ingenious and attractive. We hold the view that if each sheet is signed by the testator and initialled by the witnesses, the requirements of (*d*) are satisfied.

In the third line of the first sheet the words " 22nd July ", were written in ink to fill a blank space after the typed words " simeron tin " and before the typed words " 1963, en Lefkosia ". In the last sheet similarly " 22an " was written in ink to fill a blank space between the typed words " En Lefkosia " and " Iouliou, 1963 ".

The writings aforesaid are, to our mind, alterations.

> " When alterations are necessary to supply blanks left in a will, such as for the names of legatees or the amounts of legacies, and these blanks are afterwards filled in, the presumption is that they were inserted before execution."
>
> (Halsbury's Laws of England, 3rd Edition, Vol. 39, page 876).

In Jarman on Wills, 8th Edition, Vol. 1, page 174, the matter is treated thus :—

> " Where a will has been drawn with blanks left for the names of the legatees and the amount of the legacies, or the like, which blanks are afterwards filled up, but there is no evidence to show when, the presumption is that blanks were filled in before execution. And although there may have been no blanks, but the names of the legatees are found interlined, yet if the interlineation only supplies a blank in the sense, and appears to have been written with the same ink and at the same time as the rest of the will, the Court will conclude that it was written before execution."

The alterations in the present will were effected to supply blanks left by the drafter or the person who typed the will. There is a third blank space in the certificate of the certifying officer after the words " taftin tin " and before " Iouliou, 1963 ". These blank spaces were intended for the date or the day of July, 1963, when the will was to be executed. By analogy of the statement of the law with regard to legacies and amounts, we are of the view that it must be presumed and we do presume that the alterations, *i.e.* the filling up of the blank space by the insertion of the date " 22an Iouliou " in the first page and " 22an " in the fourth page, were effected before execution. But even if we were to hold that they were inserted after execution, the provisions

of section 28 were followed. This is evident from the three initials, those of the testator and the two subscribing witnesses appearing on the first and last sheets opposite and near the alterations. Non compliance with section 28 does not invalidate the will but renders ineffectual the alterations which in this will are insignificant. Without the alterations the time of the execution of the will is July, 1963. This will was deposited at the District Court of Nicosia on 26.7.1963. (Vide packet containing the will, *exhibit* No. 10).

We are satisfied that the will, *exhibit* No. 10 in form, fully satisfies the requisites provided by our law.

Issues B. and C. Sound mind, memory and understanding, undue influence and fraud, will be taken together.

In the definition section of Cap. 195 " incapable person " is defined :—

> " ' incapable person ' means any person not under disability but who is certified by two duly qualified medical practitioners to be incapable from infirmity of mind due to disease or old age of managing his own affairs."

> "A will, though executed and attested according to law may not have legal validity. It is necessary for the validity of a will that the testator should be of sound mind, memory and understanding, words which have consistently been held to mean sound disposing mind, and to import sufficient capacity to deal with and appreciate the various dispositions of property to which the testator is about to affix his signature." (Halsbury's Laws of England, 3rd Edition, Vol. 39 page 855, paragraph 1293).

In *Banks* v. *Goodfellow* [1861–1873] All E.R. Reprint, p. 47, it was held :—

> " For a testator to be capable of making a valid will he must be able to understand the nature of the act and its effects and the extent of the property of which he is disposing, and he must be able to comprehend and appreciate the claims to which he ought to give effect and the manner in which his property is to be distr buted between them. The fact that the testator suffers from mental illness which does not interfere with the general powers and faculties of his mind and in particular does not prevent his possessing the

faculties mentioned above, so that there is no connection between illness and the will, will not render the wil liable to be overthrown on the ground of the testator's incapacity."

Lord Kenyon in *Greenwood* v. *Greenwood* 163 E.R. 930 at p. 943 described the disposing memory thus :—

> " And I take it a mind and memory competent to dispose of his property when it is a little explained, perhaps thus : Having that degree of recollection about him that would enable him to look about the property he had to dispose of, and the persons to whom he wished to dispose of it. If he had a power of summoning up his mind so as to know what his property was, and who those persons were that then were the objects of his bounty, then he was competent to make his will."

At the commencement of the hearing Mr. Tr antafyllides who was conducting the case for all the plaintiffs, though he was retained by plaintiffs No. 2, 4 (*a*), (*b*) & (*d*), abandoned the allegat on that the will was executed at a time when the deceased was not of sound mind, memory and understanding.

Is, however, the nstrument propounded the product of the free exercise of the testator's judgment ? The document in question cannot be considered to be his will if it has been obtained by the undue nfluence or fraud of his wife. In section 2 of the Wills and Succession Law, Cap. 195, " Undue nfluence " and " fraud " are defined :—

> " ' undue influence ' means the exercise by a person of influence to dominate the will of another person where the relations subsisting between them are such that one of them is in a position to dominate the will of the other and uses that position to obtain an unfair advantage over the other.
>
> ' Fraud ' includes any of the following acts committed by a person or with his connivance or by his agent, with intent to deceive another person or his agent or to induce him to do any act, that is to say —
>
> (*a*) the suggestion as to a fact, of that which is not true by one who does not believe it to be true,
>
> (*b*) the active concealment of a fact by one having knowledge or belief of the fact,
>
> (*c*) any other act fitted to deceive."

Lord Cranworth, L.C. in delivering his opinion in *Boyse* v. *Rossborough* [1843–1860] All E.R. Reprint, p. 610 at p. 614, said :—

> " influence, in order to be undue within the meaning of any rule of law which would make it sufficient to vitiate a will must be an influence exercised either by coercion or by fraud. In the interpretation, indeed, of these words some latitude must be allowed. In order to come to the conclusion that a will has been obtained by coercion it is not necessary to establish that actual violence has been used or even threatened. The conduct of a person in vigorous health towards one feeble in body, even though not unsound in mind, may be such as to exercise terror and make him execute as his will an instrument which, if he had been free from such influence, he would not have executed. Imaginary terrors may have been created sufficient to deprive him of free agency. A will thus made may possibly be descrided as obtained by coercion. So as to fraud : If a wife by falsehood raises prejudices in the mind of her husband against those who would be the natural objects of his bounty, and by contrivance keeps him from intercourse with his relatives to the end that the impressions which she knows he has thus formed to their disadvantage may never be removed, such contrivance may, perhaps, be equivalent to positive fraud and may render invalid any will executed under false impressions thus kept alive. It is, however, extremely difficult to state in the abstruct what acts will constitute undue influence in questions of this nature. It is sufficient to say that, allow ng a fair latitude of construction, they must range themselves under one or other of these heads—coercion or fraud."

Even if the power to overbear the will of the testator is admitted, it must be shown that such power was exercised and that the circumstances of the execution are inconsistent with any other view but undue influence. (*Panayiota Mosaikou* v. *Zehra Eren*, 23 C.L.R. p. 286 at p. 291 ; *Graig* v. *Lamourex* [1920] A.C. 349). Sir J. Hannen, P. in *Wingrove* v. *Wingrove* [1855] 11 P.D. 81, had this to say :—

> " It is only when the will of the person who becomes a testator is coerced into doing that which he does not desire to do, that it is undue influence."

J. Nicholl in *Williams* v. *Goude* [1828] 1 Hag. Ecc. 577, said :

> " the influence to vitiate an act must amount to force and coercion destroying free agency.

The person propounding a will has to prove that a will has been executed with due solemnities by a person of competent understanding, and apparently a free agent. The burden of proving that it was executed under undue influence is on the party who alleges it."

(*Bary* v. *Butlin* [1838] 2 Moo. P.C. 480 ; *Boyse* v. *Rossborough, supra*).

" Undue influence and fraud cannot be presumed. The mere proof of the existence of the relation of husband and wife does not raise a presumption of undue influence sufficient to vitiate a gift by will."

(*Parfitt* v. *Lawless* [1872] L.R. 2 P. & D. 462 ; *Boyse* v. *Rossborough, supra*).

The defendant was born in Egypt in 1928. She received secretarial education at Port Said and in 1948 she emigrated to Cyprus, the country of the origin of her parents. Her parents, her elder brother and her younger sister followed her in two or three months. Hers was a poor family. She took up employment with N.A.A.F.I. at £30 per month. In 1955 she married the deceased who was 21 years older than her. The deceased in his late forties was well established in life. Long and hard work in a foreign African country brought to him wealth. The twenty one years difference of age did not weigh in the mind of the defendant against that union. After the marriage, she accompanied her husband to Rhodesia. The husband needed a wife, love and affection and the wife was after good settlement in life, support and security.

P.W. 10, the first son of Christopoulos family, brother of the deceased, was, at the time in Rhodesia, managing for 18 months or so, the main stores of the deceased. In a matter of months he had to return to Cyprus. First, he was asked to change residence in Rhodesia, as the house in which he lived was to be occupied by the brother and sister-in-law of the defendant, who were expected in that country. The relations with his brother, the deceased, became, in his own words, " not bad, but cold ". He attributes this to the defendant. On his arrival at Nicosia, he sent to the deceased a telegram but no letter. They did not see each other until May, 1968, when P.W. 10 visited the deceased in the Hospital almost on the eve of his death. The deceased only sent Christmas cards in 1956 and 1957. Though the deceased came to Cyprus many times, P.W. 10 out of pride, as he stated, did not visit his own brother. We presume that similarly the deceased acted

The deceased was financially assisting his brother Phaedon by regular montly remittances of £10–£15 until the latter's death which occurred as late as 1.5.1965, *i.e.* about two years after the date of the execution of the will, subject-matter of this action.

Irene I. Zacharoudhi, plaintiff No. 3, (P.W. 8), lost her husband as early as 1931. This widow lived with her mother and her daughters. The deceased, an affectionate brother, was rendering her financial assistance. He even endowed her daughter Xenia with £1,000. His letters, *exhibits* Nos. 4 and 5, are very eloquent indeed. One of the witness's daughters was taken to Rhodesia by the deceased. It is this witness who escorted the deceased to the ultar for the marriage ceremony. But the deceased, after h s marriage to the defendant, stopped helping his widow sister. Instead, he was financially helping his mother-in-law. The relations of this brother and sister, to use an expression of diplomacy, were severed. They did not exchange letters, they did not meet, they did not see each other. This sister, naturally, felt embittered, but she contended that out of pride she did not write or complain to her own brother. After 1955 she saw him only in the Nicosia General Hospital shortly prior to the very end of his life. She again blames the defendant for this marked discontinuance of the connections of the deceased with his direct family. It was put to her in cross-examination that she sent an insulting letter to the deceased. She refuted this allegation, but the defence failed to produce the said letter, and the defendant did not refer in her own evidence to this charge of the deceased.

Sister Eleni, for the last 40 years, was residing in Morocco. Nothing was said about her relations with the deceased, except that in 1967 she was taken by the deceased from Morocco to Athens for medical treatment. This, however, took place long after the execution of the will.

Brother Telemachos was on good terms with the deceased.

Anna Tofaridou (P.W.5), an elderly lady, wife of a doctor of Nicosia, sister of Telemachos Christopoulo's wife, who impressed us as a witness of truth, testified that the family of the deceased were complaining that since his marriage their good relations with the deceased were shaken because of the defendant. She also heard the conversation of the deceased and his wife. Both complained against plaintiff No. 3

True, the deceased, after his marriage to the defendant was estranged from most of his blood relatives and he leaned towards his wife's family. The brother of the wife was helped to emigrate to Rhodesia. It was to him that the deceased's business was sold in 1961. The mother-in-law was receiving remittances from the deceased. The deceased, when in Cyprus, stayed at the relatives of the defendant and did not even meet his own brothers or sisters.

Further, in the will of 22.7.1963, there is a marked decrease of the amounts the deceased was bequeathing to his relatives by the will of 24.5.1963. The legacies to Eleni, Irene and Christakis, were reduced from £1,000 to £100. A mere perusal of the will shows glaringly how favourable was the treatment of the relatives—the mother—of the defendant, not to mention the wife herself.

It was further submitted by Mr. Dikigoropoullos that the deceased committed illegalities in his endeavour to avoid payment of income tax in Rhodesia and referred us to *exhibits* Nos. 4, 5 & 7 and acted against the Exchange Control Regulations of South Rhodesia in accumulating 32,000 dollars in New York, a city outside the Sterling area.

The defendant who, according to her evidence, performed the duties of the secretary, book-keeper and cashier of the deceased, knew of these illegalities and with threats of exposing him, kept him under her control. We are afraid the evidence before us is so meagre, that it is not possible for us to draw the inferences on which the argument is based. They are not inferences, but sheer conjectures unwarranted by the evidence.

True, the deceased after his marriage to the defendant, was estranged from most of his blood relatives. The will benefited the defendant and her relatives to the detriment of his blood relatives. We must not overlook, however, that she had been his partner for eight years until the day of the execution of the wiill. He had no children.

On the totality of the evidence before us, indeed with the exception of an incident in 1968 related by Mrs. Tofaridou (P.W.5), the couple were leading a happy and harmonious life. We are unable to say whether the couple had any troubles which they did not disclose. As it was said by an English Judge, the relation constituted by marriage is of a nature which makes it as difficult to inquire, as it would be impolitic to permit inquiry into all which may have passed in the intimate union of affections and interests which it is the paramount purpose of that connection to cherish.

That the deceased should wish to secure by his will his young wife—in 1963 she was only 35 years old—surely affords no surprise.

In para 8 (c) & (d) of the statement of claim the plaintiffs contend :—

"(*c*) The execution of the said alleged will was obtained by the undue influence of the defendant.

Substance of the case

The Defendant took advantage of the age of the testator and of his weak and excitable state and knowing that his memory was greatly impaired, induced him to make the said will. The influence of the defendant over the testator was so complete that he was not a free agent and the said alleged will was not the offspring of his own volition but was obtained by the importunity of the defendant.

(*d*) The execution of the alleged will was obtained by the fraud of the defendant.

Substance of the case

The defendant took advantage of the age of the testator and of his weak and excitable state and by false representations as to the character and/or behaviour of the plaintiffs or any one of them she prevented the testator from benefiting his relatives."

There is no evidence to show that the wife knew that he was making his will. Was this will executed by the testator in compliance with threats or commands of his wife, or was he led to execute it by unfounded prejudices artfully instilled into or cherished in his mind by his wife against those who would otherwise have been the probable objects of his bounty? Is there any evidence that the defendant represented to him matters to the prejudice of his family—the plaintiffs—which he knew or believed to be false, or that knowing him to entertain prejudices against his relatives resting on no foundation, she contrived by force or artifice to prevent any intercourse with them, fearing that the result of any free intercourse would be to cause a reconciliation? None of the plaintiffs who blame the defendant, ever attempted not only to meet their brother, but even to communicate with him. They entrenched themselves and out of pride, as they stated, they avoided him. Soon after the marriage of the deceased prejudices

were created, but the plaintiffs, to our minds, are not unblemished of what followed. No particular instances and no act of the defendant tending to prove plaintiffs' allegations against the defendant, were stated.

The evidence of P.W. 5 (pages 16 and 17 of the record) points to the contrary. Further, the picture we have of the deceased is of an educated business man who could not be harnessed by his wife. He was the boss in his home. He did not transfer any property during his life time in defendant's name.

The influence and fraud must relate to the will. The legacies and the will might create a hypothesis of such influence or fraud. But we cannot exclude that the deceased of his own free will without any influence or fraud, wished to benefit the persons with whom he was pleased and only because of the blood relationship left " something " to his brother and sisters. This is more consistent with the facts proved before us. We find that the will was not obtained by the influence or fraud of the wife.

Issue D. Domicil. We shall embark now on an inquiry as to the domicil of the deceased Christopoulos. We shall first endeavour to state the law on the subject.

> " Domicil is that legal relationship between a person (called the propositus) and a territory subject to a distinctive legal system which invokes the system as the personal law of the propositus and involves the Courts of that territory in having primary jurisdiction with regard to his personal status and to disposition of his property. The relationship arises either, on the one hand, from the propositus being or having been, resident in such territory with the intention of making it his permanent home. "

(*Henderson* v. *Henderson* [1965] 1 All E.R. p. 179, per Sir Jocelyn Simon, P. on p. 180).

Permanent Home : The notion which lies at the root of the concept of domicil is that of permanent home. By domicil we mean home, permanent home, and if you do not understand your permanent home, I am afraid that no illustrations drawn from various writers or various opinions will very much help you to it.

> " A legitimate child automatically takes as his domicil of origin the domicil which, at the moment of his birth, is his father's domicil."

(*Flynn* v. *Flynn* [1968] 1 All E.R. p. 49 at p. 52).

> " Domicil of origin, or, as it is sometimes called, perhaps less accurately domicil of birth, differs from domicil of choice mainly in this—that its character is more enduring, its hold stronger and less easily shaken off. In *Munro* v. *Munro* Lord Cottenham observed that it was of the principles adopted not only by the Laws of England but generally by the laws of other countries :
>
> > ' that the dom cil of origin must prevail until the party has not only acquired another, but has manifested and carried into execution an intention of abandoning his former domicil and acquiring another as his sole domicil Residence alone has no effect *per se*, though it may be most important as a ground from which to infer intentions ' ".

Lord Cairns, L.C. said in *Bell* v. *Kennedy* (L.R. 1 Sc. & Div. 307 at p. 310) :

> "The law is, beyond all doubt, clear with regard to the domicil of birth, that the personal status indicated by the term clings and adheres to the subject of it until an actual change is made by which the personal status of another domicil is acquired. "

The onus of proving that a domicil has been chosen in substitution for the domicil of origin, lies upon those who assert that the domicil of origin has been lost.

As Lord Westbury points out (*ibid.* at pp. 320, 321) :-

> " Residence and domicil are two perfectly distinct things Although residence may be some small *prima facie* proof of domicil, it is by no means to be inferred from the fact of residence that domicil results, even although you do not find that the party had any other residence in existence or in contemplation."

Lord Chelmsford's opinion in *Udny* v. *Udny* (L.R. 1 Sc. & Div. 441 at p. 455) was that —

> "In a competition between a domicil of origin and an alleged subsequently-acquired domicil there may be circumstances to shew that however long a residence may have continued no intention of acquiring a domicil may have existed at any one moment during the whole of the continuance of such residence. The question

in such a case is not, whether there is evidence of an intention to retain the domicil of origin, but whether it is proved that there was an intention to acquire another domicil."

Such an intention, I think, is not to be inferred from an attitude of indifference or a disinclination to move, increasing years, least of all from the absence of any manifestation of intention one way or the other. It must be, to quote Lord Westbury again, a " fixed and settled purpose ". His Lordship said (*ibid.* at p. 321) :—

> " unless you are able to shew that with perfect clearness and satisfaction to yourselves, it follows that a domicil of origin continues."

So heavy is the burden cast upon those who seek to show that the domicil of origin has been superseded by a domicil of choice. And rightly, I think. A change of domicil is a serious matter—serious enough when the competition is between two domicils both within the ambit of one and the same kingdom or country, more serious still when one of the two is altogether foreign. The change may involve far-reaching consequences in regard to succession and distribution and other things which depend on domicil. To the same effect was the inquiry which Lord Cairns proposed for the consideration of the House in *Bell* v. *Kennedy* (*ibid.* at p. 311). It was this—whether the person whose domicil was in question had " determined " to make, and had in fact made, the alleged domicil of choice.

> " His home with the intention of establishing himself and his family there and ending his days in that country."

(*Winans* v. *Attorney-General* [1904–1907] All E.R. Reprint, p. 410 at pp. 412 & 413).

> " Every independent person can acquire a domicil of choice by the combination of residence and intention of permanent or indefinite residence, but not otherwise." (Dicey & Morris, The Conflict of Laws, page 86).

In *Wahl* v. *A.-G.* [1932] All E.R. Reprint, page 922 at p. 924, Lord Warrington, said :—

> " Residence or even ' permanent ' residence does not of itself import domicil, for a man may have a residence

in more countries than one. Moreover, domicil carries with it grave results as to status, succession to property, and so forth.

An alien with a foreign domicil does not by becoming a British subject thereby elect a domicil in this country. The application for naturalisation with a statement that he had no intention of permanently leaving the United Kingdom was not considered evidence to support a finding that the propositus abandoned his German domicil of origin for an English domicil."

In *Traverse* v. *Holley and Holley* [1953] 2 All E.R. 794 at p. 797, Jenkins, L.J. dealt with the matter thus :—

" the onus of proving the abandonment of a domicil of origin in favour of a domicil of choice was on the person alleging the change of domicil, and that to discharge that onus it must be clearly shown that the individual whose domicil was in question removed from the country in which he had his chosen place of domicil with a definite and fixed intention (what Lord Westbury called ' a fixed and settled purpose ' in *Bell* v. *Kennedy* (L.R. 1 Sc. & Div. 321), and the Earl of Halsbury, L.C. ' a fixed and determined purpose ' in *Winans* v. *A-G.* [1904] A.C. 288), then or subsequently formed of making the latter his permanent home in substitution for and to the exclusion of the former."

The law demands a high standard of proof for the abandonment of the domicil of origin and acquisition of domicil of choice owing to the high degree of retentiveness which the law ascribes to the domicil of origin.

" The abandonment of a domicil of choice acquired dependently in favour of a domicil of origin re-acquired by personal volition must, in the nature of things, generally be of all changes of domicil the one the least onerous of proof." (*Henderson* v. *Henderson*, *supra*, p. 185).

"It is now settled that where a person simply abandons a domicil of choice, his domicil of origin revives by operation of Law."

(*Udny* v. *Udny* [1869] L.R. 1 Sc. & Div. p. 441 and *Harrison* v. *Harrison* [1953] 1 W.L.R. 865).

A domicil requires permanent or settled home (*factum*) and intention (*animus*).

" The state of a man's mind, may be as much a fac as the state of his digestion ; but, as Harman, L.J.

is reputed to have observed, ' the doctors know precious little about the one and the judges know nothing about the other '. The difficulty is as old as the Year Books and the celebrated dictum of Brian, C.J. in 1477 uttered in theological terms which have waned in fashion : ' *Le Diable n'ad conusance de l'entent de home* '. All that the Court can do is to draw inferences from what has been said and done ; and in doing this, too much detail may stultify." (Per Megarry, J. in *Re Flynn*, *supra*, at p. 51).

Against this background of law, we turn to consider the facts of the present case.

The evidence before us consists of a number of documents and oral evidence with regard to the life story of the deceased and various declarations of intention allegedly made by him.

The late Costas Christopoulos was born in Nicosia of Cypriot Greek Orthodox parents on 10.2.1907. He graduated the Pancyprian Gymnasium. It appears that he was a poor student of outstanding proficiency and was being awarded scholarship every year. This, he did not forget at the time of the execution of his will.

On 6.1.1926, young and poor, but driven by ambition to make a fortune, he left Cyprus for Sudan. On 22.3.1934 he returned to his native land but in the following year he departed for the Union of South Africa. After a short stay there, he moved to Southern Rhodesia.

In this last country, hard work and good lack, brought him sufficient wealth. His father passed away on 11.10.1942 and his mother on 14.3.1944. They were buried in Block 48 and Block 45 of the Greek Orthodox cemetery of Nicosia.

Life in South Rhodesia was far from pleasant. The natural environment and the local population were hostile. The deceased was attached to his relatives and his native land. In his letters produced as *exhibits* before us (the latest is dated 11.10.1947), he expressed his desire and intention to return and settle in Cyprus.

On 1.9.1944 whilst in S. Rhodesia, he purchased the graves of the Greek cemetery under Block Nos. 45 & 48— the graves wherein his parents were resting.

He returned to Cyprus for the first time after 1935 on 22.7.1953 (Passport *exhibit* No. 9 C. and evidence of P.W.10,

plaintiff No. 1). On his return to Cyprus, as a good son with his brother and sister, went to the cemetery where his parents were buried. The remnants of the father were removed in grave No. 45 where the mother was buried and a memorial service was officiated. A family tomb was constructed at his expense and he said to P.W.8, his sister Irene, that those graves would be for Christopoulleous, Christopoulos family graves.

On 19.8.1953, he left for Europe and returned to Nicosia on 30.11.1953. In February, 1954 he betrothed to the defendant and on 6.3.1954, left for S. Rhodesia taking with him his brother Christakis (P.W. 10, plaintiff No. 1). In November of the same year he was back in Cyprus.

On 29.11.1954, a current account No. 763 was opened with the National Bank of Greece, Nicosia Branch. The deceased lodged on that day £2,549.320 mils. He gave to the Bank his S. Rhodesia address, as it appears on *exhibit* No. 1. During this visit he purchased his only immovable property in Cyprus, a building site which he sold in 1963. On the 7th July, 1955, he married to the defendant and on the following day the couple departed for Athens wherefrom they returned to Cyprus on 17.9.1955. On 14.10.1955 the couple left for S. Rhodesia.

The deceased had a flourishing business there. He owned a house about 100 miles away from town. He ran a big supply store and a number of smaller stores at various local villages. Not less than 200 persons were in his employment.

The domicil of origin of the deceased is undoubtedly Cyprus. Until his marriage in 1955 not only he had no animus of abandoning this domicil for a domicil of choice, but all his actions point unequivocably that he retained his domicil of origin.

It is the allegation of the defendant that the couple left Cyprus in order to live in South Rhodesia permanently, but that they would visit Cyprus whenever his business would permit (pages 41, 70 & 79 of the record).

The couple lived in a house of rather poor construction. New furniture were bought and a piano. No substantial alterations. 11 photographs of that house were produced. They display a residence with very common furniture. Neither the house itself, nor the furniture impressed us as a suitable permanent home for a man of the financial

standing of the deceased. The house itself was described by P.W. 10 and D W. 1. We don't have, however, before us evidence about the standard of houses in that area, and therefore, we can draw no inference affecting such an important issue as domicil.

The deceased stayed at Mount Darwin for five consecutive years until 1960 when for health reasons, travelled to Europe. In the past he stayed for 17 continuous years in Africa. He was then, however, single and was struggling for the creation of a business. Five years is not a long period for a person to stay away from his native country. We must not lose sight of the fact that from 1955 to 1959 the people of this country were fighting a liberation struggle. The country was torn with revolution.

His business was in Rhodesia, his residence was there, his family and by family we mean his wife, as there were no issues, was in that country. The only evidence comes from the wife. The fact that he became a citizen of S. Rhodesia has no bearing. Probably this citizenship was necessary for him in connection with the better running of his business, but we cannot surmise.

The only other piece of evidence we have for this period, is the lodgments in his bank account in Nicosia, as they appear in *exhibit* No. 1. In July, 1960, the deceased had a credit account for 32.227.26 dollars at Barclays Bank D.C.O. in New York. His advice to P.W.7 Hj. Savvas was, to place his eggs in more than one basket.

A person, however, who intended permanently to reside at Rhodesia intending to abandon his domicil in Cyprus why was remitting money to this Country ? The amounts were not negligible. In December, 1955, the lodgments were in the region of £4,000. On 21.2.1957 the amount standing to his credit was £17,943.850. On 2.7.1957, there is a lodgment of £4,000 (Page 10 of *exhibit* No. 1).

On 13.2.1957 he sends a letter to that Bank which was answered by letter of the Bank dated 28.2.1957. On 28. 2.1957 there is an entry at p. 10 " *Analipsis pros ekdosin omologhias Ar.* 5555/5364, £17,000 ".

On 6.5.1957, at page 11 there is this entry : " *Anal. di' ekdosin omologhias Ar.* 7577/2577 £6,539.700."

The evidence for the period 1955 to 1960 is scanty and comes mainly from the defendant herself. Is there evidence

sufficient to satisfy that high standard of proof demanded by law for the abandonment of the domicil of origin for a new domicil in S. Rhodesia ?

Be that as it may, in 1960 the deceased for health reasons leaves S. Rhodesia. He travels to Europe for health reasons. He was found suffering from insufficiency of heart and the doctor advised permanent rest. They arrived in Cyprus on 18.8.1960. In Cyprus the deceased made up his mind and expressed his such intention to his wife to settle in Greece. On 3.10.1960 they were in Athens. He started getting to effect his said decision. He looked for a house and commissioned an estate agent to find a suitable house. He deposited £1,800 in a Bank in Greece. In 1960 he made up his mind to wind up his business in Rhodesia and leave that country.

He returned to Rhodesia in 1961, where the deceased sold his business to defendant's brother and shipped their furniture and household to Piraeus. On 11.10.1961, the couple was back to Cyprus. They left Rhodesia intending not to revert to that country. They had not, by that time, settled in Greece, as they had not acquired a house. They did not lease one and, therefore, whatever the domicil of the deceased was prior to that time, the domicil of origin either continued or revived.

> " A person abandons a domicil of choice in a country by ceasing to reside there and by ceasing to intend to reside there permanently or indefinitely, and not otherwise."
>
> (Per Megarry, J. in *Re Flynn*, page 57).

In January, 1962 the deceased went to Athens. On 1.2.1962 he submitted *exhibit* No. 14, an application to the Ministry of Finance, whereby he applied to pay reduced duty for the importation of his furniture and household, as he intended to live in that country.

On 6.2.1962 he acquired a house and on 15.2.1962 he took over possession of the house. He lived in that house ever since. A detailed description of the house was given by the defendant. P.W.5, Mrs. Anna Tofaridou and some of the defence witnesses testified with regard to this house. Not less than 44 photographs were produced as *exhibits*, depicting various rooms and the interior and exterior of the house which had, in the meantime, been furnished. The neighbours of the deceased, Panayiotis Paraskevopoullos (D.W.7), an industrialist and Kalliopi Koutroupi

(D.W.8) a Greek lady flew over to Cyprus and gave evidence about the social life of the deceased and his contentment with his life in Athens. It was submitted by one of the learned counsel for the plaintiffs that the circle of the deceased was not very wide. He was a retired merchant of ill health. To our mind, the evidence of the two defence witnesses coupled with the evidence of the defendant and the evidence of the two Cypriot teachers, Panayiota Demetriadou (D.W.9) and Loiza Christou Kontemeniotou (D.W.10), who casually visited his house in 1962, satisfactorily prove that the deceased must have had a happy life of the standard he was in need of at his age and in that country. The evidence of D.W.5, Zambas, a member of the House of Representatives, corroborates the evidence of the aforesaid witnesses.

The deceased imported in Greece a righthand-drive car which, however, he exported to Cyprus, disposed it here and he acquired a new car with Greek registration and a lefthand-drive one—the one which is permitted by the regulations of that country. He was staying in Athens most of the year, but for a considerable period he was abroad. This, to our mind, for a man who needed leisure, entertainment and rest was only natural. He had to travel to Europe for health reasons and for some entertainment which for so many years he lacked whilst struggling in Africa to make his fortune. We must view his trips to Europe in the light of modern life of leisure and travel. He gave instructions to his bankers in Rhodesia to remit to him the money he was allowed by the Exchange Control Laws of that country to Athens. So soon as he settled himself in Greece, on his instructions, the amount of 32.224 dollars were transferred from New York to Greece. He purchased in Greece fields which could be developed into building sites. He purchased a hotel in London, following his *motto* of life " place your eggs in more than one basket ".

He visited Cyprus occasionally and his entries in this country appear on *exhibit* No. 9 (f). They are very few indeed and defendant testified that their visits were only as a favour to her to see her own relatives. Indeed the deceased had no connections, by that time, with any of his relatives residing in Cyprus. His only brother with whom he was on good relations, Telemachos, was a resident of Athens, and according to the evidence before us, Telemachos was invited when the deceased was giving parties. The deceased during the six years, from the time of his settlement in Athens until the time of his death, did not purchase any property in Cyprus, but on the contrary,

in May, 1963, he disposed of his only building site in this country.

The deceased was always interested in the education of poor persons from Cyprus. Actually, at sometime, he took to Athens two girls to whom he was providing lodging in order to enable them to pursue higher education. In 1963, whilst in Cyprus, he gave instructions to the advocate Mr. Phivos Clerides to draft the rules for a trust fund, again for the purpose of helping poor Cypriots to pursue higher studies. In his will he bequeathed £12,000 to the Pancyprian Gymnasium for a similar purpose. This feeling and actions of the deceased are accountable by his memories of his pupil-age in Nicosia. He was a poor bright schoolboy who met financial difficulties and to his credit, when he had the means, he wanted to help poor and able young persons, and this, to our mind, was a psychological need for what he suffered during the formative years of his life.

Conflicting statements of the intention of the deceased were stated by various witnesses. P.W.5, Anna Tofaridou, a respectable lady, in some way related by marriage to the deceased, stated that whilst in London, in 1967, at the Hotel owned by the deceased, the latter told her : " We shall travel around the world, we shall enjoy ourselves and then we shall retire in Cyprus to pass peacefully our last days. I shall wait for the political situation to settle down and then we shall go and pass our last years in Cyprus." And sometime later in the same year in Athens, whilst treated at lunch by the deceased in his own house in a conversation with her husband, the deceased said : " *Emis perimenoume pos ke pos na teliosoume tis doulies mas ke na pame na engatastathoume stin Kypro* " ..... " What do you want, doctor, to come, and settle in this country ? (referring to Greece) where chaos prevails and Governments change so often. The taxes on the one hand and the traffic on the other, are unbearable. This place is only for occasional visit and not for long stay." And addresing his sister Eleni over the table said : " Eleni, don't you want to be buried in Cyprus with us ?"

The statements in London were not contradicted by defendant as the deceased and P.W. 5 were alone. The statement, however, of Athens was denied by the defendant

The teachers, defence witnesses 9 and 10, testified that the deceased in 1962 told them in his own house in Athens that he settled permanently in Athens and that he was

content with his life there. Statements to the same effect were made by the deceased to D.W.11, E. Lambrou, a teacher of a secondary education. These three teachers impressed us that in substance they were telling the truth, but we do not accept that they recollected after 9 and 5 years respectively, the *ipsissima verba* of the deceased's utterances. Beside the weakness of human memory, there was no reason why these young ladies would remember verbatim these casual conversations with their pleasant and polite host in Athens. The evidence of the array of witnesses, D.W.7, D.W.8, D.W.9, D.W.10 and D.W.11, tends to prove statements of the intention of the deceased to make Athens or that he had already made Athens his permanent or settled home with that intention which is required for the acquisition of a domicil of choice. We accept the substance of the evidence of these witnesses, though as we have already said, we are not satisfied that the actual words they used was the wording of the deceased. D.W.13, however, is a completely different witness. He did not impress us at all. His demeanour in the witness box left much to be desired. He is not a disinterested person. His bias was obvious throughout his evidence. We reject his evidence *in toto*.

In the case of *Scappaticci* v. *The Attorney-General* [1955] 1 All E.R., p. 193, Willmer, J., said :—

> " It seems to me that on a matter such as domicil, where the state of mind of the deceased person is the crucial question, that which he may have said in his life time is certainly excellent, if not the best, evidence, as to what his state of mind was."

In the case of *Ross* v. *Ellison* (*or Ross*) [1930] A.C.1, at p. 6, LORD BUCKMASTER observed :

> " Declarations as to intention are rightly regarded in determining the question of a change of domicil, but they must be examined by considering the person to whom, the purposes for which and the circumstances in which they are made and then must further be fortified and carried into effect by conduct and action consistent with the declared expression."

Declarations as to his intention to return to Cyprus, even if true, and we have no reason why not to accept the evidence, are conflicting. It is not unnatural or improbable for a person in casual conversation with different persons and at different times to make conflicting statements and, in our opinion, this is what happened with the deceased.

As he did not do anything to substantiate or to fortify or carry into effect his alleged intention of returning to Cyprus, we treat these declarations as utterances of the deceased not meant by him and not expressing his real intention. They are inconsistent with his actions. Words over lunch were not serious words, but probably a reaction to what Dr. Tofarides has said.

Further, there are the statements of the defendant on the day of the funeral at the house to P.W.5 and at the cemetery that by the burial of the deceased in Nicosia his will was fulfilled. As it appears from the letters of the deceased, he was a sentimental type of man. Probably he was feeling some attachment to Cyprus, but in the light of the totality of the evidence, we are not satisfied that this was more than a sentiment. We accept that the wife made the statements and the evidence of Dr. Eratosthenis Tofarides does not disprove this evidence, as he was there to look after the various relatives of the deceased and not the widow only. Even in his own evidence he admitted that he could not hear all the utterances of the widow.

A feeling of sentimental attachment to the land of one's domicil of origin, evinced by his wish to have his ashes scattered there, is not sufficient for the retention of that domicil (*Platt* v. *A.G., of New South Wales*, [1878] 3 App. Cas. 336, at p. 344), nor is a floating intention to return to the country of his origin.

Brett, L.J., in *Concet* v. *Googhegan* [1878] 9 Ch. D. at p. 458, said :

> " . . as the testator did not fix a date or make any definite condition by which the residence was limited to a definite time, it must be taken that his intention was to make his residence in England permanent."

Exhibit No. 32, the embarkation and disembarkation cards, were signed by the deceased for a purpose wholly unconnected with his intention to have his permanent home in Greece or elsewhere. They were filled and signed only for statistical purposes and it is our view that if an application for naturalization was treated in *Wahl's* case not affecting domicil, we are not justified to take into consideration the statements in the embarkation and disembarkation cards one of which is not in the handwriting of the deceased.

The deceased executed a will in Cyprus on 24.5.1963 which was revoked by his will, subject-matter of this action,

dated 22.7.1963. The deceased executed his two said wills in Cyprus during a period of a short stay in this country. In his will he describes himself : " *Ek Lefkosias nyn katikos Athinon* " (of Nicosia now resident of Athens). The Greek Civil Code distinguishes between ' *katikia* ' and ' *diamoni* '. We are of the opinion that the word ' *katikos* ' in the wills of the deceased were not used in any legal technical sense, but in their ordinary meaning. Furthermore, the drafter of the will cannot be presumed to have known the Greek Law, he being a Cypriot. By ' *katikos* ' he meant simply resident. This description of the deceased in the said wills, does not carry further either the case for the plaintiffs or the case for the defendant.

The defendant in Probate application 175/68 swore an affidavit in support of application for grant to her of probate of the will. The wording of that application follows the prescribed form in the Administration of Estates Rules, 1955. The last place of abode of the deceased is given as Nicosia. She explained on oath that she signed the affidavit prepared by her advocates who told her that she was signing a document required under the Law of the country for the proof of the will. We do not attach any significance to the contents of that affidavit and we are of the opinion that it has no bearing on the determination of the domicil of the deceased.

By the will the deceased bequeathed a legacy of £12,000 to the Pancyprian Gymnasium but he did leave legacy for S. Rhodesian Institutions. The residue of his estate, however, he bequeathed to an Establishment for the endowment of poor orphan girls in Greece.

On the totality of the evidence before us, we are of the view and so hold that the deceased's domicil of origin was Cyprus. In October, 1961, the domicil of the deceased was still Cyprus.

In 1962, he moved to Greece. Then or subsequently he formed the intention of making Greece his permanent home in substitution for and to the exclusion of Cyprus.

In conclusion we say that the evidence unequivocally indicates that the deceased at the time of his death both physically and spiritually had Greece as his chosen settled or permanent home.

E. In paragraph 10 of the statement of claim it is alleged that the said will is contrary to section 41 (1) (b) of the Wills and Succession Law, Cap. 195.

By his will the deceased disposed of all his movable and immovable property of which he died possessed.

Section 41 (1) (b) of the Wills and Succession Law, Cap. 195, reads as follows :—

"41 (1) Save as in section 42 of this Law provided, where a person dies leaving :—

(*a*) .....

(*b*) a spouse or a father or a mother, but no child nor descendant thereof, the disposable portion shall not exceed one-half of the net value of his estate."

Questions of material or essential validity of the will of movables are always governed by the law of the testator's domicil at the time of his death and not by the law which he intended to govern and the validity of the will of immovables is determined in every respect whether as regards capacity, form, or material validity by the *lex loci rei sitae*. (Halsbury's Laws of England, 23rd Ed., Vol. 7 pp. 51 & 53).

We have already found as a fact that Christopoulos was domiciled in Greece. The evidence of the expert on Greek Law, (D.W.4) Costaropoullos is to the effect that the law governing the succession of aliens is the law of their nationality and by law of nationality is meant the Municipal Law excluding the conflict of laws. This is the combined effect of articles 28 & 32 of the Greek Civil Code. Hence the law of the deceased's domicil looks to or sends back to the country of allegiance, but the country of nationality sends back (renvoyer) the decision to the country of domicil. Thus there is an inextricable circle "in the doctrine of renvoi" and no result is reached. In Re *Annesley, Davidson* v. *Annesley* [1926] Ch. 692 the Court had to determine, first, whether the domicil of the testatrix was English or French, she having died in France without having acquired a formal French domicil according to French Law, and, secondly, whether French Municipal Law applied to her so that she had power only to dispose of one-third of her movable property. Russel, J. determined the question of domicil according to the requirements of English Law and found that the testatrix at the time of her death was French. He then having regard to two decisions of the Court of Cassations and the view of a French expert that a French Court would accept the renvoi and distribute in accordance with French Municipal Law held that the

testatrix had power only to dispose of one-third of her movable property by will. Basing, however, his decision on a further ground at p. 708, he said :—

> " When the law of England requires that the personal estate of a British subject who dies domiciled, according to the requirements of English law, in a foreign country shall be administered in accordance with the law of that country, why should this not mean in accordance with the law which that country would apply, not to the propositus, but to its own nationals legally domiciled there ? In other words, when we say that French Law applies to the administration of the personal estate of an Englishman who dies domiciled in France, we mean that French Municipal Law which France applies in the case of Frenchmen. This appears to me a simple and rational solution ..... "

This ground was not accepted in *Re Ross*, *Ross* v. *Waterfield* [1930] 1 Ch. 377 Luxmoore, J., after reviewing the cases and on the evidence adduced decided that the law of the acquired domicil in Italy applied the law of the English nationality, the local law of the nationality and that therefore the Italian right to *legitima portio* was therefore excluded.

In *Re Askew*, *Marjoribanks* v. *Askew* [1930] All E. R. (Reprint) 174 Maugham, J., declined to follow *Re Johnson*, *Roberts* v. *Attorney-General* [1903] 1 Ch. 821 and the alternative ground on which Russel, J., decided *Re Annesley Davidson* v. *Annesley* and at page 162 said :—

> " I think the foreign law is a matter of fact in our Courts. If the proposition that where a British national dies domiciled in a foreign country his movables here must be distributed according to our view of what the Courts of that country would decide in the particular case means that generally speaking we must ascertain the foreign municipal law and also the rules of private international law applied by the foreign country and then decide the case, I respectfully agree."

In Dicey & Morris, p. 526, we read :—

> " Succession to immovables situated abroad, or of money representing such immovables, is determined in general by whatever system of the law the *lex situs* would apply. That law determines whether the deceased died testate or intestate, and if intestate, who is entitled to succeed to the immovables ; whether the testator had testamentary capacity ; and whether

the devise is materially or essentially valid, for instance, whether the estate devised are valid, *and whether the testator is bound to leave a legitima portio* to his wife or family."

Writers on the Conflict of Laws are almost unanimous that, so far as foreign land is concerned, the *lex situs* means not the domestic law of the *situs* but the conflict of laws rule of the *situs*, which may refer to some other system of domestic law. In *Re Duke of Wellington, Glentanar* v. *Wellington* [1948] Ch. 118 (C.A.); [1947] 2 All E.R. 854 where the Court was concerned with the applicability of the doctrine of renvoi in Spanish law it was held that in questions of succession to immovables Spanish law would not accept the renvoi which English law made to it as the *lex situs* and that the question of the devolution of immovable property in Spain was to be resolved by reference to English Law.

As we have already said the law of nationality of the *de cujus* in this case is the law of Southern Rhodesia and the law governing the succession to his movables is therefore the law of that country. His immovables are situated in Greece, England and Southern Rhodesia and it follows that the *lex situs*, is the law of England for the immovables in England and the law of Southern Rhodesia for the immovables in Greece and Southern Rhodesia. These are foreign laws to us. We have no evidence of the state of the law in Southern Rhodesia. We shall not embark on a fruitless consideration of the law governing the succession to the movable and immovable property of the *de cujus*.

From what we have said, it is clear that if the law applicable was the law of this country, the testator was not entitled to dispose more than one-half of the net value of his estate, and, therefore, any disposition in excess should be reduced and abated proportionately so as to be limited to the disposable portion, but the Law of Cyprus does not apply. We may say with certainty that the law of Greece and Cyprus are not applicable in this case.

F. In para 9 of the statement of claim the plaintiffs contend that the said will is void for uncertainty as :—

(*a*) the last paragraph of clause 1 of the said will is inconsistent with the remaining paragraphs ;

(*b*) the residue of the estate of the said deceased is purported to be donated to two different establishments in different parts of the alleged will ;

(*c*) no provision is made for the ultimate disposition of the residue in the event of the named executrix failing to comply with the testator's alleged wishes.

It is established law that a will of movables is interpreted and the will receives effect in accordance with the law intended by the testator. In the absence of indications to the contrary, this is presumed to be the law of his domicil at the time when the will is made (Dicey & Morris, Conflict of Laws, 8th Edition, page 605). Similarly the Court will construe a will of immovables in accordance with the intention of the testator ; unless, however, an intention to the contrary on the part of the testator is established, the construction of a will of immovables is governed by the *lex loci rei sitae.*

The will was executed in Cyprus at a time when the deceased had already acquired the Greek domicil of choice. The deceased did not express in his will the intention that his said will shall be construed in accordance with any system of law, except that the " Establishment for endowing poor orphan girls " should have been founded and registered in Greece and be governed by regulations to be prepared by persons approved by him or his wife. Had the defendant died contemporaneously with the testator or within 60 days from his decease, there might be room for the contention in ground (*a*). But she survived for so long. Therefore, the assertion cannot be put forward. We see, however, no repugnancy between the last paragraph of clause 1 and the remaining will. By that paragraph the testator purported to dispose not the residue *of his estate* but the balance of his property described in clause 1 (*a–e*). He only made provision in his will for the substitution of one legatee for another legatee in the event of the death of his wife within 60 days of his own decease. (S. 30 of Cap. 195). Even if, however there were contradictions, this would not frustrate the will.

> " It has become an established rule in the construction of wills, that where two clauses or gifts are irreconcilable, so that they cannot possibly stand together, the clause or gift which is posterior in local position shall prevail the subsequent words being considered to denote a subsequent intention : *Cum dum inter se pugnantia reperiuntur in testamento, ultimum ratun est.*"
>
> (Jarman on Wills, 8th Edition, Vol. I, page 576).

Sir James Mansfield, C.J., in *Doe d. Leicester and Other* v. *Biggs* [1803–1813] All E.R. (Reprint) page 546 at p. 548, said:-

" The general rule is that, if there be a repugnancy, the first words in a deed, and the last words in a will, shall prevail.

(*b*) By clause (4) of the will the deceased donated £12,000 to the ' Christopoulos Scholarship Establishment ', "so that from its annual income a number of poor students of (ek) the Pancyprian Gymnasium will have free education, according to regulations to be drafted by a person of my approval or the approval of my wife."

The last paragraph of the will reads :—

«Ἐὰν ὑπάρχῃ οἱονδήποτε ὑπόλοιπον τῆς περιουσίας μου κατόπιν τῆς πλήρους ἐκτελέσεως τῶν ὡς ἄνω κληροδοτημάτων τοῦτο θὰ περιέρχεται εἰς τὸ ' Ἵδρυμα Προικοδοτήσεως Ἀπόρων Ὀρφανῶν Κορασίδων Ἑλλάδος Κωνσταντίνου & Μαριάνθης Χριστοπούλου ' τὸ ὁποῖον θὰ ἱδρυθῇ καὶ δεόντως ἐγγραφῇ ἐν Ἑλλάδι συμφώνως Κανονισμῶν τοὺς ὁποίους ἤθελε συντάξει πρόσωπον τῆς ἐγκρίσεως μου ἢ τῆς ἐγκρίσεως τῆς συζύγου μου.»

" (If there is a remainder of my estate after the full execution of the above legacies, this will become the property of ' Constantinos and Marianthi Christopoulos Foundation for the Endowment of destitute orphan girls of Greece ' which will be formed and be duly registered in Greece in accordance with Regulations to be drafted by a person of my approval or the approval of my wife").

We shall dwell in short with these points as the law of this country is only of academic value, for the sole reason that it is not applicable.

It was argued for the plaintiffs that both these legacies are void as neither of the Foundations was in existence on the date of death of the testator. They invoked the provisions of section 31 of Cap. 195.

Section 31 of the Wills and Succession Law, Cap. 195, reads :—

" No legacy shall be valid :—

(*a*) if made to a person who is not in existence at the time of the death of the testator :

Provided that a legacy to a posthumous child of the tesator shall be valid :

Provided further that where any person being a child or other issue of the testator to whom a legacy

shall be left die in the lifetime of the testator leaving issue, and any such issue of such person shall be living at the time of the death of the testator, such legacy shall not lapse, but shall take effect as if the death of such person had happened immediately after the death of the testator, unless a contrary intention shall appear by the will ;

(*b*) if it does not express a definite intention."

Section 31 (*a*) irrespective of the definition of the word " person " in the Interpretation Law, must be interpreted rather narrowly. A comparison of the provisions and the wording of this section with section 25 of the Cyprus Wills and Succession Law, 1895, and with the English Wills Act, 1837, section 32, leaves no doubt that section 31 (*a*) refers to physical persons and we do not think that it covers legal persons such as the Institutions envisaged in this will. Section 31 is not, therefore, exhaustive and according to the Courts of Justice Law, the Rules of Equity apply.

The object of both bequests is definite. The object of these gifts is charitable. The one is for the advancement of education of the poor pupils. The second is for providing dowry and, therefore, the establishment in life of poor orphan girls. A gift for the benefit of poor persons generally is a good charitable gift (*Attorney-General* v. *Matthews*, 2 Lev. 162). Giving dowry, whatever views and prejudices an ndividual may hold about dowry, is not contrary to public policy ; our system of law not only accepts dowry but a dowry contract is a valid and enforceable contract. (Section 77 of the Contract Law, Cap. 149).

A charitable bequest is not void for uncertainty merely because the body of persons for whose benefit it is given is large and fluctuating (*Re Brown* [1888] 1 Ir. R. 423) or because it gives the testator's trustees a wide power of selection. In *Weir* v. *Crum-Brown* [1908] A.C. 162, the trustees were to make a scheme for the relief of indigent bachelors and widowers " who have shown practical sympathy either as amateurs or professionals in the pursuits of science in any of its branches, whose lives have been characterised by sobriety, morality and industry, and who are not less than fifty-five years of age." This bequest was not considered to lack certainty.

By the words of the will the testatrix is bound to appoint a person to draft regulations for the establishment of the

Institutions and the administration thereof for the carrying into effect of the definite charitable intentions expressed by the testator.

It was submitted that the performance of the particular charitable purpose evinced in the will is impossible and/or impracticable and therefore the gift is void for uncertainty. We are unable to understand the alleged impossibility or impracticability. True, it is not possible for all poor students of the Pancyprian Gymnasium to be benefited. But this could not have been the intention of the testator. The limited amount of the bequest does not make it void for uncertainty. The legacies are not conditional, that the fund should be sufficient to benefit all the poor students and all the poor orphan Greek girls. A scheme has to be prepared and the regulations shall include relevant provisions.

If a testator bequeaths a legacy to a charitable institution which has never existed, this is *prima facie* a good charitable bequest. (Jarman on Wills, 8th Edition Vol. 1, p. 250).

In *Re Davis, Hannen* v. *Hillyer* [1900-1903] All E.R. (Reprint) page 336 Buckley, J. held :—

> "(*a*) if there be a gift to a charitable institution which existed, but has ceased to exist, there is a lapse.
>
> (*b*) If the gift is to a charitable institution which never existed, the Court, which always leans in favour of a charity, is more ready to infer a general charitable intention than to infer the contrary."

He cited the following passage from the judgment of Lord Eldon in *Mills* v. *Farmer* [1815] 1 Mer. 55 at p. 94 which had already been adopted by Lord Herschell in *Re Rymer* ([1895] 1 Ch. 19) :

> " 'A third principle which is now to late to call in question, is that in all cases in which the testator has expressed, an intention to give to charitable purposes, if that intention is declared absolutely, and nothing is left uncertain but the mode in which it is to be carried into effect, the intention will be carried into execution by this Court, which will then supply the mode which alone was left deficient' ".

The bequest for the advancement of education, *i.e.* the rendering of financial help to poor pupils of the Pancyprian Gymnasium is certain, lawful, definite and the provisions of the Charities Law, Cap. 41 may be invoked for the carrying into effect of the volition of the donor-testator.

With regard to the Fund for the endowment of poor orphan Greek girls the Court of this country, the Supreme Court—is vested with exclusive jurisdiction—will not direct a scheme to be settled as the property of the charity is out of the jurisdiction. (Halsbury's Laws of England, Vol. 4, page 309). Can this trust be carried into effect according to the law of that particular country, *viz.* Greece ? The evidence of D.W.4, Costaropoullos, the expert on Greek Law, supported by the provisions of *exhibits* 29 and 30, is clear and unambiguous. The combined effect of Articles 108, 109 and 110 of the Greek Civil Code and Articles 1, 2 (1) and 95 (1) of *exhibit* 30, Greek Law 2039 of 39 is that an institution for the carrying into effect of the charitable purpose of the legacy may be founded and function in the kingdom of Greece.

G. Plaintiffs further claim an order of the Court appointing plaintiffs No. 1–4 (*b*) as administrators of the estate of the deceased.

The administration of estates is governed by the *lex forum*.

We found that the will, *exhibit* 10, is the free and valid will of the deceased Constantinos Michael Christopoulos who died in Nicosia on the 4th of May, 1968 but was domiciled in Greece. The will is not void for uncertainty and the dispositions made therein are not governed by the laws of this country. The defendant is the widow of the deceased and the named executrix. Even if Christopoulos died intestate, according to the Administration of Estates Rules, 1955, the defendant had the right and the priority to be appointed administratrix. We see no reason why the will should not be proved and the volition of the deceased not to be executed.

In the result the action is dismissed.

We give judgment as per prayers 10 (*a*) (*b*) (*c*) & (*d*) of the counterclaim.

With regard to costs, however, bearing in mind the various and serious points raised in this action, we have come to the conclusion that the costs of all advocates who appeared in the case should be paid out of the estate.

Costs to be assessed by the Registrar of this Court.

Action dismissed.
Judgment as per counterclaim. Order for costs as above.