

1979 January 26

{STAVRINIDES, J.}

ELIZABETH IBRAHIM HALLAK,

*Petitioner,*

v.

IBRAHIM MOHAMMED HALLAK,

*Respondent.*

(*Matrimonial Petition No. 1/74*).

*Marriage—Formal validity—Tested according to the requirements of the lex loci celebrationis—Civil marriage under the Marriage Law, Cap. 279 between a Moslem and a Christian, valid—Article 87 of the Constitution and section 7(1)(b) of the Turkish Family (Marriage and Divorce) Law, Cap. 339 not applicable.*

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*Conflict of Laws—Marriage—Civil marriage—Formal validity.*

The parties to this petition went through a civil ceremony of marriage, in the office of the District Officer, Larnaca, in accordance with the provisions of the Marriage Law, Cap. 279.

The petitioner was born in Germany but for the eight years last preceding the hearing was living in the Lebanon, running a “travel, transport and trading agency.” She was an “American citizen.” The respondent was born in the Lebanon and was a citizen of that country. He was a Moslem and the petitioner a Christian.

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The petitioner petitioned the Court for a declaration that the said marriage was a nullity and she relied on s. 7(1)(b) of the Turkish Family (Marriage and Divorce) Law, Cap. 339 and on Article 87 of the Constitution.

*Held*, (1) that there is nothing in Article 87 of the Constitution that in any way bears on the validity of the marriage ceremony in question.

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(2) That as the petitioner is not a Moslem section 7(1)(b) of Cap. 339 is inapplicable; see also section 3 of the Law.

(3) That if a marriage is attacked as being formally invalid the question whether this is so must be tested according to the requirements of the *lex loci celebrationis* (relevant proposition in Cheshire's *Private International Law* (3rd Ed.) p. 460, para. 1, based on the Authority of *Simonin v. Mallac* (1860), 29 L.J. (N.S.) P. 97; 2 Sw. & Tr. 65, *adopted*); that the subject marriage having been performed in accordance with the Marriage Law, Cap. 279, its validity falls to be determined by the *lex loci celebrationis* and it is, therefore, upheld; and that, accordingly, the petition must be dismissed.

*Petition dismissed.*

Cases referred to:

*Simonin v. Mallac* (1860), 29 L.J. (N.S.) P. 97; 2 Sw. & Tr. 65.

### **Matrimonial Petition.**

15 Petition by the wife for a declaration that a civil ceremony of marriage that the parties went through in the office of the District Officer Larnaca, on April 13, 1972, is a nullity.

*A. Emilianides*, for the petitioner.

No appearance for the respondent.

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*Cur. adv. vult.*

The facts and arguments appear sufficiently from the judgment delivered by:

25 STAVRINIDES J. This is a petition for a declaration that a civil ceremony of marriage that the parties went through together in the office of the District Officer, Larnaca, on April 13, 1972, is nullity.

The petition is undefended, and the only evidence before me other than the petitioner's affidavit accompanying the petition is her oral testimony.

30 The petitioner was born in Germany, but for the eight years last preceding the hearing was living in the Lebanon, running "a travel, transport and trading agency". She is an "American citizen". The respondent was born in the Lebanon and is a citizen of that country. He is a Moslem and the petitioner a  
35 Christian.

The petitioner's case appears from the following paragraphs of the petition:

“6. That in accordance with the provisions of the Marriage Law relating to Moslems, c.339, Turkish Family Law, s.4(1)(b) (or possibly “s.7(1)(b)”) the marriage between persons of Moslem faith is regulated by that Law. The same principle applies under the Constitution of Cyprus according and in compliance with art. 87. 5

7. That according to the law of Lebanon the religious marriage is valid for persons living or residing in Lebanon and that the marriage between a Moslem and a non-Moslem is governed by the Moslem Sacred Law. 10

8. That the marriage between the petitioner and the respondent is invalid according to the law of domicil of the parties.

9. That the marriage is invalid and of no legal effect.”

I will have something to say presently about the reference to Cap. 339 and Art. 87 of the Constitution. But before I do so I must point out that although para. 8 of the petition refers to “the domicil of the parties”, nothing is said in either the petition or the affidavit accompanying it as to where it is. Presumably, reading para. 8 in conjunction with that preceding it, what is meant is that both parties are domiciled in the Lebanon. Be that as it may, the Court has jurisdiction to entertain this petition, because the marriage ceremony was celebrated in this country. As stated in Rayden on Divorce (8th Edn.), p. 54 para. 30), 15 20 25

“ The Court has jurisdiction to entertain a suit for nullity where the marriage was celebrated in England, where the marriage is *void ipso jure*.”

Coming now to Art. 87 of the Constitution, it consists of three paragraphs, of which the first is subdivided into eleven sub-paragraphs; but at no time did counsel for the petitioner indicate which of its provisions is supposed to be relevant to this case. In the circumstances it is sufficient to say that there is nothing in it that in any way bears on the validity of the marriage ceremony in question. 30 35

With regard to Cap. 339, the typing, both in the original of the petition and its copy in the file of proceedings, of the section

number intended is indistinct through a figure having been typed on another: it can be either "4(1)(b)" or "7(1)(b)". Section 4 has no sub-section and simply defines "betrothal". Section 7(1)(b) prohibits the marriage of a "Moslem woman" to a  
5 "non-Moslem man". As the petitioner is not a Moslem that provision also is inapplicable, apart from the fact that s.3 of that Law expressly provides that:

10 "This Law shall apply to all cases in which at least one of the parties to any matter dealt with in this Law is a Turk resident in Cyprus professing the moslem faith and to no other cases."

It follows that the reference Cap. 339 also is of no assistance.

I now go on to consider the points raised by paras. 6-9 of the petition. Counsel for the petitioner cited Cheshire's Private  
15 International Law (3rd Ed.), pp. 446-447. Of that quotation it is sufficient to say that it contains nothing that is of assistance to either party: the relevant proposition is at p. 460, para. 1, where it is stated, on the authority of *Simonin v. Mallac* (1860), 29 L.J. (N.S.) P. 97; 2 Sw. & Tr. 65, that

20 "It is clear ..... that if the marriage is attacked as being formally invalid, the question whether this is so must be tested according to the requirements of the *lex loci celebrationis*."

Adopting, as I do, that decision, I find that the subject marriage  
25 ceremony having been performed in accordance with the Marriage Law, Cap. 279, its validity falls to be determined by the *lex loci celebrationis* and therefore I uphold it.

Accordingly I dismiss the petition.

As it is undefended there is no question as to costs.

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*Petition dismissed.*