~~GMR.G.Q~~

Judgment 40, 1965

IN THE PRIVY COUNCIL

No. 25 of 1963

ON APPEAL FROM THE SUPREME COURT
OF MAURITIUS

B E T W E E N :

ANTOINE CHOPPY and
LOUISE CHOPPY — Appellants

- and -

1. MERICIA ANGELA BIBI (s) otherwise Choppy
2. MERICIA ANGELA BIBI (s) (here acting in her capacity as legal guardian of the minors ANDREA BIBI MARY BIBI ROBERT BIBI MICHEL BIBI and BENJAMIN BIBI
3. AUGUSTE BIBI acting in his capacity of sub-guardian of the minors ANDREA BIBI MARY BIBI BENJAMIN BIBI ROBERT BIBI and MICHEL BIBI
4. HARRY BIBI
5. MAD. DOLY BIBI (m)
6. LUCE BIBI (m)
7. NOE BIBI
8. HARRY BIBI here acting in his capacity of "TUTEUR AD HOC" of the minors ANDREA BIBI ROBERT BIBI MICHEL BIBI MARY BIBI and BENJAMIN BIBI — Respondents

RECORD OF PROCEEDINGS

T.L. WILSON & CO.,
6, Westminster Palace Gardens,
London, S.W.1.
Solicitors for the Appellants.

HY.S.L. POLAK & CO.,
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Solicitors for Respondents Nos.1, 2,4,5,6,7 and 8.

MATTHEW MORRIS,
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Solicitors for Respondent No.3.

P.C.
GM2.6.2.

IN THE PRIVY COUNCIL — No. 25 of 1963

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RECORD OF PROCEEDINGS

INDEX OF REFERENCE

E X H I B I T S

DOCUMENTS TRANSMITTED BUT NOT REPRODUCED

Description of Document	Date
Letter from Registrar Supreme Court, as to date of hearing	8th and 22nd May and 6th June 1958
Praecipe	17th July 1959
Witness Summons (with Return of Service)	18th July 1959
Amended Plaint, with Schedule A thereto, and Return of Service	9th April 1958 (Registered 22nd September 1959)
Affidavit of Antoine and Louise Choppy	28th September 1959
Affidavit of J.E. Thomas	28th September 1959
Return of Service	5th October 1959
Notice of Defendants to Plaintiffs and Return of Service	8th October 1959
Petition of Antoine Choppy and Louise Choppy	29th October 1959
Praecipe	3rd November 1959
Summons to Witness	4th November 1959
Recognizance by Party appealing	10th November 1959
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Notice of Appeal	7th November 1959
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IN THE PRIVY COUNCIL No. 25 of 1963

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RECORD OF PROCEEDINGS

NO. 1

STATEMENT OF CLAIM

In the Supreme Court of Seychelles

No.1

Statement of Claim
9th April 1958
(Registered 18th April 1958)

IN THE SUPREME COURT OF SEYCHELLES - Antoine Choppy, and Louise Choppy both of La Digue. Proprietors, Plaintiffs Versus 1. Mrs. Mericia Angela Bibi, who calls herself Mrs. Mericia Angela Choppy, the widow of Augustin Choppy which name of Choppy and her status of widow of Augustin Choppy are neither recognised nor accepted and is repudiated by the Plaintiffs. 2. Mrs. Mericia Angela Bibi, who calls herself

In the Supreme Court of Seychelles

No.1

Statement of Claim 9th April 1958 (Registered 18th April 1958) continued

Mericia Angela Choppy the widow of Augustin Choppy, which name of Choppy and her status of widow of Augustin Choppy are neither recognised nor accepted and is repudiated by the Plaintiffs, here acting in her capacity as legal guardian of the minors; Andrea Bibi, who calls himself Choppy, Mary Bibi, who calls herself Choppy, Benjamin Bibi, who calls himself Choppy. Robert Bibi, who calls himself Choppy, and Michel Bibi, who calls himself Choppy, which name of Choppy taken by Andrea Bibi, by Mary Bibi, by Benjamin Bibi, by Robert Bibi, by Michel Bibi, either by themselves or through their guardian is neither recognised nor accepted and is repudiated by the Plaintiffs. 3. Auguste Bibi, who calls himself Choppy, which name of Choppy is neither recognised nor accepted and is repudiated by the Plaintiffs, acting in his own personal name. 4. Auguste Bibi, who calls himself Choppy, which name of Choppy is neither recognised nor accepted and is repudiated by the Plaintiffs, here acting in his capacity of sub-guardian of the minors; Andrea Bibi, who calls himself Choppy, Mary Bibi, who calls herself Choppy, Benjamin Bibi, who calls himself Choppy, Robert Bibi, who calls himself Choppy, and Michel Bibi, who calls himself Choppy. which name of Choppy, Andrea Bibi, Mary Bibi, Robert Bibi, Benjamin Bibi, and Michel Bibi, have taken by themselves or through their guardian and which name of Choppy is neither recognised nor accepted and is repudiated by the Plaintiffs. 5. Harry Bibi who calls himself Choppy, which name of Choppy is neither recognised nor accepted and is repudiated by the Plaintiffs. 6. Mad. Doly Bibi, who calls herself Choppy, which name of Choppy is neither recognised nor accepted and is repudiated by the Plaintiffs, the wife of Wesley Payet. 7. Luce Bibi, who calls herself Choppy, which name of Choppy, is neither recognised nor accepted and is repudiated by the Plaintiffs, the wife of Benjamin Payet. 8. Noe Bibi, who calls himself Choppy, which name of Choppy is neither recognised nor accepted and is repudiated by the Plaintiffs. 9. Harry Bibi, who calls himself Choppy, which name of Choppy is neither recognised nor accepted and is repudiated by the Plaintiffs here acting in his capacity of "TUTEUR AD HOC" of the minors; Andrea Bibi, who calls himself Choppy, Mary Bibi who calls herself Choppy, Robert Bibi, who calls himself Choppy, Benjamin Bibi, who calls himself

Choppy, and Michel Bibi, who calls himself Choppy, which name of Choppy, Andrea Bibi, Mary Bibi, Benjamin Bibi, Robert Bibi, and Michel Bibi, have taken by themselves or through their guardian, which name of Choppy is neither recognised nor accepted and is repudiated by the Plaintiffs. 9 Defendants. All of La Digue Island.

DEFENDANTS. STATEMENT OF CLAIM. 1. First Plaintiff is the brother "frere germain" of Augustin Choppy. Second Plaintiff is the sister "soeur germain" of Augustin Choppy. 2. Augustin Choppy, died on the 12th November, 1957. 3. Augustin Choppy was until his death and together with Antoine Choppy and Louise Choppy, owners in full ownership of the following immovable properties:- (a) The Island of "Marianne" one of the Seychelles Archipelago, of the extent of about one hundred and fifty acres. (b) A portion of land of the extent of about twenty seven acres from which a plot of two acres has been distracted and situated at La Digue Island. (c) A portion of land of the extent of about twenty seven acres, situated at La Digue Island. The following immovable properties belong of the De Cujus "Augustin Choppy" for the whole. Land known under the name of "Terrain Naidoo". A portion of land of the extent of eleven acres situated at Ladigue Island by the place called Anse Reunion and bounded as follows:- On one side by the sea shore. On the second side, by Clement Payet, now Mrs. Olive Radegonde; on the third side by Mr. Frederic Payet, now Mr. & Mrs. Joseph Choppy; on the fourth side in the upper part, by the public road, which separates "separe" the said land. Land known under the name of "Terrain Payet". A portion of land, situated at Ladigue Island and bounded as follows :- Towards the East, and South-East by the land of Hajee Mahomed Carrin Rassool; towards the North, by the land of Carrin Rassool and by the property of M'c Gaw and towards the West by the land of Capucin Beaubois and Evariste Payet. Land known under the name of "Terrain Maurice Payet". A portion of land, situated at Ladigue Island of the extent of eight acres (distracted from a land of twenty two acres and twenty seven perches) and bounded according to a memorandum of Survey of Alfred Avice du Buisson, a Sworn Land Surveyor, dated

In the Supreme Court of Seychelles

No.1

Statement of Claim
9th April 1958
(Registered 18th April 1958)
continued

the 29th and 1st July 1914 - towards the North; by the plot of land marked C in the Memorandum of Survey, by a line measuring one thousand seven hundred and ninety feet or 581 metres and 35 centimetres, directed West 130. North towards the South by a plot of land marked A on one thousand seven hundred and twenty five feet or 579 metres and 75 centimetres; towards the East, by the heirs Jules Payet, on one hundred and ninety one feet or 62 metres; towards the West border "bord Ouest" of a marsh which borders the land of the heirs Abdool Rassool. Land known under the name of "Terrain Alex Payet." A portion of land situated at Ladigue Island and bounded as follows :- On one side by the heirs Payet, on the second side by the same parties (heirs Louis Payet) on the third side, by the heirs Pondard and on the last side, by the heirs Abdool Rassool. Land known under the name of "Terrain K.C. Chetty." A portion of land situated at Ladigue Island and bounded as follows :- On one side towards the North, by Thomas Prera, towards the West by Edouard Constance; towards the South, by Jules Rosalie and towards the East by Clementine Cecile this land is of extent on one and a quarter acres. Land acquired from Abdool Rassool Hossen. a. A portion of land of the extent of one acre, situated at Ladigue Island and bounded as follows :- One side by Furcy Morel; on the second side, by Arnold Dolphin; on the third side, by Ellie Boulle; and on the fourth side by Edouard Boulle. b. The bare ownership of the following lands situated at Ladigue Island and bounded as follows :- On one side by Rosemond Payet; on the second side by Ellie Boulle; or assigns; on the third side by Frederic Lamiral, and on the fourth side, by Celestin Marie. c. All the surplus of a land of four acres, situated at Ladigue Island and bounded as follows :- On one side by Fursy Morel; on the second side, by Ellie Boulle, and on the two other sides by the land of Dolphin. d. A portion of land of the extent of one acre situated at Ladigue Island and bounded as follows :- On one side by Furcy Morel; on the second side, by Arnold Dolphin; the full ownership of a land of the extent of three acres, situated at Ladigue Island and bounded as follows :- On one side by Ellie Boulle, on

the second side by Rosemond Payet; on the third side by Frederic Lamiral and on the fourth side by Celestin Morel. All the surplus of a land of four acres, situated at Ladigue Island and bounded as follows: On one side by Furcy Morel; on the second side by Ellie Boulle; and on the two other sides by the land of Dolphin. Land known as "Terrain Ernesta et autre." A small portion of land situated at Ladigue Island, place called Anse Reunion, and bounded as follows:- On one side by the public road, on the seventeen feet (English measure) on the second side by the surplus of the vendors, on the two hundred and sixty two feet (English measure) on the third side, by the surplus of the land of the vendors and by a line parallel to the first line, on the public road on seventeen feet on the last side, by the land of the purchaser himself." Land known as "Terrain de Sylva." A portion of land of the extent of nine and a half acres, situated at Ladigue Island, and bounded as follows :- towards the North by Alphonse Nageon; towards the South by the land of Paris Payet; towards the West on the sea shore side, by Alphonse Nageon and towards the East by the mountain and by Miss Sophie. The coaster "Marianna" of 6.26 tons nett-registered under No.40 (Number of Certificate). 4. On the 2nd November, 1957 Reverend Father Maurice, a Roman Catholic priest executed a document which purports to show that Augustin Choppy was married by him, Father Maurice in "Articulo Mortis" to the first Defendant, Mrs. Mericia Angela Bibi. 5. In that document it is stated that Augustin Choppy acknowledged that Harry Bibi, Noe Bibi, Mad.Doly Bibi, Luce Bibi, Auguste Bibi, Andrea Bibi, Mary Bibi, Benjamin Bibi, Robert Bibi, and Michel Bibi, were the children born of his intimate relations with the first defendant, Mrs.Mericia Angela Bibi, who was his concubine and remained his concubine until his death. 6. Harry Bibi, Noe Bibi, Mad. Doly Bibi, Luce Bibi, Auguste Bibi, Andrea Bibi, Mary Bibi, Benjamin Bibi, Robert Bibi, and Michel Bibi, are the acknowledged children of the first Defendant, Mrs. Mericia Angela Bibi. 7. The respective acts of birth of the said Harry Bibi, Noe Bibi, Mad. Doly Bibi, Luce Bibi, Auguste Bibi, Andrea Bibi, Mary Bibi, Benjamin Bibi, Robert Bibi, and Michel Bibi, show that they were registered as acknowledged natural

In the Supreme Court of Seychelles

No.1

Statement of Claim
9th April 1958
(Registered 18th April 1958)
continued

children of the first Defendant Mrs.Mericia. 8. The aim and effect of this document if it were valid and legal would make the Defendants; Harry Bibi, Noe Bibi, Mad. Doly Bibi, Luce Bibi, Auguste Bibi, Andrea Bibi, Mary Bibi, Benjamin Bibi, Robert Bibi, and Michel Bibi, legitimated children of both Augustin Choppy and Mrs. Mericia Angela Bibi, the first Defendant. 9. Plaintiffs aver that the document of the 2nd November, 1957, purporting to be an Act of witnessing the alleged marriage of Augustin Choppy with the first Defendant which would carry with it the legitimacy of Andrea Bibi, Mary Bibi, Benjamin Bibi, Robert Bibi, Michel Bibi, Auguste Bibi, Luce Bibi, Mad. Doly Bibi, Noe Bibi, and Harry Bibi, would purport to render them the legitimate children of Augustin Choppy is null and void in law for the following reasons:- (a) That the conditions necessary for a marriage in "Articulo Mortis" did not exist. (b) That the formal requirements of the Civil Status Ordinance Chap.26 were not complied with. (c) That the said Augustin Choppy, before and at the time of the purported marriage was suffering from mental infirmity. (d) That at the time of the purported marriage, Augustin Choppy was unable by reason of mental infirmity to know the nature and quality of his purported acceptance of the act of marriage. 10. WHEREFORE the plaintiffs pray for a judgment of this Honourable Court declaring that:- (a) The document of the 2nd November,1957,which purports to show the marriage of Augustin Choppy with the first Defendant, Mrs. Mericia Angela Bibi, be declared null and void to all intents and purposes. (b) That the registering of the document of the 2nd November, 1957 (the purported act of marriage) in the special register kept to that effect, be struck out, along with any marginal entry which might have been made by the Civil Status Officer in that special Register. (c) That should there be any entry made by the Civil Status Officer in the act of birth of Harry Bibi, Noe Bibi, Mad. Doly Bibi, Luce Bibi, Auguste Bibi, Andrea Bibi, Mary Bibi, Benjamin Bibi, Robert Bibi, and Michel Bibi, making them or pretending to show that they have become legitimated in consequence of the alleged marriage in "Articulo Mortis" of Augustin Choppy with the first Defendant. Mrs. Mericia Angela Bibi, be erased from their respective Acts of birth. The whole with Costs. Dated this 9th

April, 1958. (sd) Antoine Choppy. (sd) Louise Choppy, Plaintiffs. (sd) James E. Thomas, Plaintiff's Attorney. Documents relied upon: 1. Certified copy of the document of the 2nd November,1957,(purported act of marriage). 2. Title deeds showing that Augustin Choppy along with the Plaintiffs were owners in full ownership of the immovable properties described under paragraph 3 of the Statement of Claim. 3. Act of death of Augustin Choppy. 4. Act of birth of Augustin Choppy. 5. Act of birth of Antoine Choppy. 6. Act of birth of Louise Choppy. 7. Act of Birth of Mrs. Mericia Angela Bibi. 8. Act of birth of Auguste Bibi. 9. Act of birth of Harry Bibi. 10. Act of Birth of Noe Bibi. 11. Act of birth of Mad. Doly Bibi. 12. Act of birth of Luce Bibi. 13. Act of Birth of Andrea Bibi. 14. Act of birth of Mary Bibi. 15. Act of birth of Benjamin Bibi. 16. Act of birth of Robert Bibi. 17. Act of birth of Michel Bibi. 18. Certified copy of the register in which the purported marriage of the 2nd November, 1957 has been registered. Oral evidence. (sd) Antoine Choppy (sd) Louise Choppy Plaintiffs. (sd) James E. Thomas, Plaintiff's Attorney. Registered at Seychelles this eighteenth day of April 1958 in Register A 32 No.2942 (sd) P.Fock Heng for Registrar of Deeds.

No. 2

SUMMONS AND RETURN OF SERVICE

THE SEYCHELLES CODE OF CIVIL PROCEDURE, 1919
(No. 34 of 1919) (Form 2)

IN THE SUPREME COURT OF SEYCHELLES

CIVIL JURISDICTION

ANTOINE CHOPPY & OR. Plaintiffs

against

MRS.MERICIA ANGELA CHOPPY & ORS, Defendants

SUMMONS TO APPEAR TO A PLAINT

WHEREAS a plaint numbered 30/58 was filed in the Registry of the Supreme Court on the 24th

In the Supreme Court of Seychelles

No.2

Summons and Return of Service 28th April 1958 continued

day of April against you the above-named Defendant:

You are hereby summoned to appear at a sitting of the Supreme Court to be holden at nine o'clock in the fore noon of the 8th day of May in the year One thousand nine hundred and fifty eight to answer the said plaint.

And take note that in default of your appearance judgment may be given against you notwithstanding.

Given under my hand at the Court House, in the Colony of Seychelles, this 28th day of April, in the year One thousand nine hundred and fifty eight.

(sd) E. Bossy

Registrar of the Supreme Court.

To the above named Defendant.

A copy of the above-mentioned summons and plaint has been duly served by me the undersigned Usher at .....o'clock in the.....noon on the.....day of.....in the Year One thousand nine hundred and fifty by delivering the same to the person of the said.....

USHER IN AND FOR THE SUPREME COURT OF SEYCHELLES

PAYMENT INTO COURT

(Sections 107 to 109, Ord. 34 of 1919)

You may, if you wish, pay into the Court such sum of money as you shall consider a full satisfaction for the demand of the plaintiff. This may result in a considerable saving in the costs you might otherwise have to pay if judgment is given against you.

Copies of the above-mentioned summons and plaint were duly served by me the undersigned Usher by delivering two copies to Harry Bibi at Victoria on the 28th day of May 1958 - Auguste Bibi by delivering two copies to him at

No.2

Summons and Return of Service 28th April 1958 continued

La Digue on the 29th day of April 1958 - Mrs. Mericia Angela Bibi by delivering two copies to her at her residence at La Digue on the 29th day of April 1958 - Doly Bibi - Luce Bibi - Noe Bibi, by delivering true copy to each of them at La Digue on the 29th day of April 1958.

(sd) G. Bossy
Usher Supreme Court

No. 3

No.3

Request for Further Particulars of Statement of Claim 29th April 1958

10 REQUEST FOR FURTHER PARTICULARS OF STATEMENT OF CLAIM

IN THE SUPREME COURT OF SEYCHELLES. Antoine Choppy & Or. Plaintiffs versus Mrs. Mericia Angela Choppy & Ors. Defendants. The following particulars are required of the Statement of Claim from the plaintiffs:- 1. Of paragraph 9 (a) of the Statement of Claim: Particulars of the conditions which plaintiffs allege did not exist for a marriage in "Articulo Mortis".
20 2. Of paragraph 9 (b) of the Statement of Claim: Particulars of the formal requirements of the Civil Status Ordinance, Cap.26, which plaintiffs allege have not been complied with. Dated at Victoria Mahe, this 29th day of April, 1958, (sd) R. Valabhji, Attorney for Defendants.

No.4

No.4

Amendment to Statement of Claim 8th May 1958

AMENDMENT TO STATEMENT OF CLAIM

IN THE SUPREME COURT OF SEYCHELLES - In Re: Antoine Choppy, Louise Choppy, Plaintiffs versus
30 Mrs.Mericia Angela Bibi and others, Defendants. Amendment to be prayed for by Plaintiffs:- By adding after the word "accepted" in the fourth Defendant description - the words "and is repudiated". Dated this 8th May 1958.

(Sd) G. Loizeau, Attorney for the Plaintiffs ...

.....,.....

In the Supreme Court of Seychelles

No.5

Further Particulars of Statement of Claim
19th May 1958

No.5

FURTHER PARTICULARS OF STATEMENT OF CLAIM

IN THE SUPREME COURT OF SEYCHELLES - IN RE :- Antoine Choppy and Louise Choppy. Plaintiffs versus Mrs.Mericia Angela Bibi and others. Defendants. PARTICULARS ASKED: As regards Paragraph 9 (A) there was no legal proof that Augustin Choppy was in ARTICULO MORTIS. His statement that he was in ARTICULO MORTIS should not have been accepted. No medical practitioner and no competent witnesses in Law being present. As regards Paragraph 9 (B) The witnesses to the alleged Act of marriage were not competent witnesses in Law. Augustin Choppy did not sign the alleged Act of marriage. Dated this 19th May 1958. (sd) G. Loizeau, Attorney for the Plaintiffs.

No.6

Defendants' Notice of Motion
23rd May 1958

No. 6

DEFENDANTS' NOTICE OF MOTION

IN THE SUPREME COURT OF SEYCHELLES - In Re. Antoine Choppy & Or. Plaintiffs versus Mericia Angela Choppy & Ors. Defendants. NOTICE OF MOTION. To: G. Loizeau, Esq., Attorney for the plaintiffs.

TAKE NOTICE that this Honourable Court will be moved on the 30th day of May 1958 or as soon thereafter as Counsel can be heard for an ORDER (a) that the two plaintiffs be struck out as parties in the case; (b) that defendants No.3 to 9 be struck out as defendants in the case; and (c) that the action be struck out, on the grounds set out in the affidavit annexed. Dated at Victoria, Mahe, Seychelles, this 23rd day of May 1958. (sd) R. Valabhji, Attorney for Defendants .....

No.7

Affidavit in Support of No.6
23rd May 1958

No.7

AFFIDAVIT IN SUPPORT OF NO.6

IN THE SUPREME COURT OF SEYCHELLES. In re: Antoine Choppy & Or. Plaintiffs versus Mericia

Angela Choppy & Ors. Defendants. Affidavit. I Mericia Angela Choppy, Defendant, make oath and say as follows:- 1. That a Civil Action has been entered by the brother and sister of one Augustin Choppy against me, the lawfully wedded wife, and the legitimated children of the said Augustin Choppy praying in effect for (a) the nullity of the marriage of the said Augustin with me his wife the 1st defendant in the above Action and (b) for the bastardizing of the legitimated children of the said Augustin Choppy, defendants No.3 to 9 in the above action; 2. That the grounds for the claiming or the nullity of the marriage of Augustin Choppy with me the 1st defendant and for the bastardizing of the legitimated children are set out in paragraph 9 of the Statement of Claim, as particularised in Plaintiffs' Statement of Particulars dated the 19th May 1958. 3. That the plaintiffs in this action had no interest to obtain the annulment of the marriage of Augustin Choppy with me the 1st defendant or the bastardizing of the legitimated children of the marriage. 4. That the said action is against public order. 5. That the children legitimated by the said marriage of Augustin Choppy with me the 1st defendant cannot in any event be bastardized and they should be struck out as defendants. 6. That paragraph 9 (a) of the statement of Claim as particularised in Plaintiffs' particulars is not a ground for nullifying a marriage and/or for bastardizing the children and it should be struck out. 7. That paragraph 9 (b) of the Statement of Claim as particularised in Plaintiffs' particulars is not a ground for nullifying a marriage and/or for bastardizing the children and it should be struck out. 8. That the plaintiffs have no right of action under paragraph 9 (c) and 9 (d) of the Statement of Claim as they have no interest in the action and they should be struck out as plaintiffs in the action. 9. That the plaintiffs not being parties interested have no right of action on the Statement of Claim. 10. That it is therefore necessary and in the interests of justice and public order, that the plaintiffs be struck out as parties to the action and that the Statement of Claim be dismissed. Sworn by the above-named deponent at the Registry, Court House, this 23rd day of May 1958. Before me, (sd) E. Bossy, Registrar, Supreme Court. (sd) Mme Vve. Augustin Choppy, Deponent.

The foregoing Notice of Motion and annexed Affidavit were not served. Mr.Loizeau refused to accept service. (sd) G.Bossy, Usher Supreme Court, 26.5.58..

In the Supreme Court of Seychelles

No.8

Defendants' Notice of Motion 26th May 1958

No.8

DEFENDANTS NOTICE OF MOTION

IN THE SUPREME COURT OF SEYCHELLES. - In Re. Antoine Choppy & Or. Plaintiffs versus Mericia Angela Choppy & Ors. Defendants. NOTICE OF MOTION. To: 1.Antoine Choppy and 2. Louise Choppy, of La Digue, Plaintiffs. TAKE NOTICE that this Honourable Court will be moved on the 6th day of June 1958 or as soon thereafter as Counsel can be heard for an ORDER (a) that the two plaintiffs be struck out as parties in the case; (b) that defendants No.3 to 9 be struck out as defendants in the case: and (c) that the action be struck out on the grounds set out in the affidavit annexed. Dated at Victoria, Mahe, Seychelles, this 26th day of May 1958 (sd) R. Valabhji, Attorney for Defendants.

No.9

Defence 14th June 1958

No. 9

DEFENCE

IN THE SUPREME COURT OF SEYCHELLES - Antoine Choppy & Or Plaintiffs versus Mrs.Mericia Angela Choppy & Ors Defendants. DEFENCE. IN LIMINE LITIS. 1. The Plaintiffs have no right of action in law to have the document of the 2nd November 1957 declared null and void and therefore the action must be struck out. 2. The above action is against public order and therefore should be struck out. 3. The grounds set out in paragraph 9 of the Claim for claiming the document of the 2nd November 1957 to be null and void are not sufficient to annul a marriage contracted in accordance with law and the action must be dismissed. ON THE MERITS. 1. Defendants admit that the plaintiffs are the brother and sister respectively of Augustin Choppy. 2. Defendants put the plaintiffs to the proof of paragraph 2 of the Statement of Claim. 3. Paragraph 3 of the claim is admitted and the defendants note the admission by the plaintiffs regarding properties, movable and immovable belonging to the "de cujus" Augustin Choppy. 4. As regards paragraph 4 of the Claim,

defendants aver that Augustin Choppy was duly and lawfully married in articulo mortis by Father Maurice to the 1st defendant on the 2nd November 1957 at Royal Street, Victoria, Mahe. Paragraph 4 of the claim is otherwise denied. 5. Defendants deny paragraph 5 of the claim. Defendants aver that all that is stated in the document of the 2nd November 1957, which evidences the celebration of the marriage between Augustin Choppy and the 1st Defendant is that the children listed in Column 9 of that document were born from intercourse before marriage and that these children have been legitimated by the marriage of their parents on the 2nd November 1957. Defendants deny that the 1st Defendant remained the concubine of Augustin Choppy until the latter's death. 6. Defendants put the Plaintiffs to the proof of paragraphs 6 and 7 of the Statement of Claim. 7. Paragraph 8 of the claim is denied. Defendants aver that defendants 3 to 9 are in fact and in law the children legitimated by the subsequent marriage of Augustin Choppy and the 1st defendant and they cannot be bastardized in any event. Defendants aver that the document of the 2nd November 1957 is valid and legal. 8. Paragraph 9 of the claim is denied. Defendants aver that the document of the 2nd November 1957 is a valid act, evidencing the celebration of the marriage of Augustin Choppy with the 1st defendant in accordance with law, that the 1st defendant is now the widow of Augustin Choppy and that the defendants 3 to 9 are the legitimated children of the said Augustin Choppy and the 1st Defendant. (a) Defendants deny that Augustin Choppy was not in Articulo mortis at the time of the marriage or that a medical practitioner or competent witnesses had to be present to make Augustin Choppy in articulo mortis. (b) Defendants deny that the witnesses to the document of the 2nd November were incompetent or that Augustine Choppy must sign the document. Defendants aver that Augustin Choppy had put his mark to the document to evidence his consent to the marriage. (c) Defendants deny that Augustin Choppy was suffering from mental infirmity at the time of his marriage on the 2nd November 1957. (d) Defendants deny that Augustin Choppy did not know the nature and quality of his acceptance of the act of marriage. Defendants aver that Augustin Choppy fully knew and understood that he was contracting

In the Supreme Court of Seychelles

No.9

Defence
14th June 1958
continued

marriage with the 1st defendant on the 2nd November 1957. 9. Defendants aver that the plaintiffs having treated the 1st defendant as the wife of Augustin Choppy and defendants 3 to 9 as the children of Augustin Choppy can now have no right to prove the contrary. WHEREFORE defendants pray that plaintiffs' action be dismissed with costs. Dated at Victoria, Mahe, Seychelles this 14th day of June 1958 (sd) Aug. Choppy, (sd) Mme Vve. Augustin Choppy, (sd) Mrs.Benjamin Payet, for defendants. (sd) R. Valabhji, Defendants' Attorney. Documents relied upon: 1. Act of Marriage of the 2nd November 1957. 2. Act of Death of Augustin Choppy. 3. Acts of Birth of Defendants. (sd) Aug. Choppy, (sd) Mme. Vve. Augustin Choppy. (sd) Mrs. Benjamin Payet, Defendants. (sd) R. Valabhji, Defendants' Attorney.

No.10

Registrar's Notes
16th June 1958

No.10

REGISTRAR'S NOTES

Sitting of Monday 16 June 1958 before His Lordship R.S.Rassool, Ag. C.J., assisted by the undersigned Registrar. Mr. Loizeau for Plaintiffs. Mr. Valabhji for Defendants informs Court defence has been filed. He further informs Court that he withdraws his motion because the same points have been raised "in limine" in his defence. Mr. Loizeau: I shall move for costs as I have had to prepare for the motion. Court: Arguments on points "in limine" to be heard on Thursday 26th June 1958 at 9 a.m. - Court to rule on question of costs on same date. (sd) E. Bossy.

No.11

Amendment to Statement of Claim
23rd June 1958

No.11

AMENDMENT TO STATEMENT OF CLAIM.

IN THE SUPREME COURT OF SEYCHELLES - C.S. 30/58 - In Re:- Antoine Choppy, Louise Choppy, Plaintiffs versus Mrs. Angela Mericia Bibi & Ors., Defendants. AMENDMENT TO THE STATEMENT OF CLAIM :- 1. By substituting to sub-paragraph

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Amendment to Statement of Claim
23rd June 1958
continued

(d) of Paragraph nine of the Plaint, the following sub-paragraph. (d) "That at the time of the purported marriage, Augustin Choppy was unable by reason of mental infirmity and not being in full possession of his mental faculties so as to know the nature and quality of the purported marriage which was intended also to legitimate the children of Angela Mericia Bibi: viz: Auguste Bibi, Harry Bibi, Md.Doly Bibi, the wife of Wesley Payet, Luce Bibi, the wife of Benjamin Payet, Noe Bibi, Andrea Bibi, Mary Bibi, Benjamin Bibi, Robert Bibi and Michel Bibi." 2. By adding a fourth prayer to Paragraph 10 - (Prayer of the Plaint) (Statement of Claim). (c) That the purported legitimation of the said Auguste Bibi, Harry Bibi, Mad.Doly Bibi, the wife of Wesley Payet, Luce Bibi, the wife of Benjamin Payet, Noe Bibi, Andrea Bibi, Mary Bibi, Robert Bibi, Benjamin Bibi and Michel Bibi be declared invalid in Law. 3. Prayer C to be renumbered D. Dated this 23rd day of June 1958. (sd) G. Loizeau, Attorney for the Plaintiffs.

No.12

AMENDMENT TO STATEMENT OF CLAIM

No.12

Amendment to Statement of Claim
28th June 1958

IN THE SUPREME COURT OF SEYCHELLES - C.S.30/58 - In Re. Antoine Choppy, Louise Choppy, Plaintiffs versus Mrs. Angela Mericia Bibi & Ors. Defendants. AMENDMENT TO THE STATEMENT OF CLAIM :- 1. By substituting to sub-paragraph (d) of Paragraph nine of the Plaint, the following sub-paragraph. (d) "That at the time of the purported marriage, Augustin Choppy was, by reason of mental infirmity and not being in full possession of his mental faculties, unable to know the nature and quality of the purported marriage which was intended also to legitimate the children of Angela Mericia Bibi: viz: Auguste Bibi, Harry Bibi, Mad. Doly Bibi, the wife of Wesley Payet, Luce Bibi, the wife of Benjamin Payet, Noe Bibi, Andrea Bibi, Mary Bibi, Benjamin Bibi, Robert Bibi, and Michel Bibi." 2. By adding a fourth prayer to Paragraph 10 - (Prayer of the Plaint) (Statement of Claim). 4. That the purported legitimation of the said Auguste Bibi, Harry Bibi, Mad. Doly Bibi, the wife of Wesley

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Amendment to Statement of Claim
28th June 1958
continued

Payet, Luce Bibi, the wife of Benjamin Payet, Noe Bibi, Andrea Bibi, Mary Bibi, Robert Bibi, Benjamin Bibi, and Michel Bibi, be declared invalid in Law. 3. Prayers B and C to be re-numbered C and D. Dated this 28th day of June 1958. (sd) James E. Thomas, Attorney for the Plaintiffs.

No.13

Registrar's Notes
26th June 1958

No.13

REGISTRAR'S NOTES

Sitting of Thursday 26th June 1958 before His Lordship R.S.Rassool, Ag.C.J. assisted by the undersigned Registrar Mr.Loizeau and Mr. Thomas for Plaintiffs, Mr. Valabhji for Defendants. Mr. Valabhji: I have received a copy of the amendment filed and I object to it. Mr.Thomas: The amendment is for substituting sub-para.(d) of para.9 of plaint by a new sub-para. (d) as contained in statement of amendment filed of record and also by adding a fourth prayer to para.10 (Prayer of Plaint) also para C of prayer to be numbered D as per amendment filed. Mr. Valabhji: I object to the amendments. The amendment is changing the nature of the action. First objection is that sentence does not read well. 2nd objection. In second para. D Augustin Choppy is alleged not to have known the nature and quality of his purported acceptance to the act of marriage. By the new amendment they have shifted from that to the purported marriage itself. 3rd objection. In the original plaint it was relied on mental infirmity and now they allege he was not in possession of his mental faculties. 4th objection - The original plaint was directed against act of marriage - legitimation was treated as an incidental - by this amendment my friends are trying to raise legitimation as an independent issue. They are changing the whole nature and character of the case because from nullity of act of marriage they are asking for the nullity of the legitimation. Legitimation is based on French Law and declaring children to be illegitimate may be based on English Law. I therefore submit Y.L. should not use your

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Registrar's Notes
26th June 1958
continued

discretion in allowing the amendment. Mr. Thomas: Refers to S.150 of Code of Civil Procedure. Refers to para.7 of Defence by which para.8 of plaint is denied. By this they have taken issue of the legitimation. It is not clear if nullity of marriage entails nullity of legitimation of the children. Mr.Valabhji: If amendment is allowed, I ask that it be retyped. My defence will also have to be amended. Mr. Thomas. S.150 of C.P.C. is mandatory, and very wide. Purpose of the amendment is that it is not clear if nullity of marriage entails nullity of legitimation of children. This appears in para.(b) and (c) of the prayer. There is nothing embarassing in the amendments prayed for. The reasons that the law is tricky cannot be a reason for the Court not to allow the amendment. Court: Case adjourned to 3.7.58 at 9 a.m. for ruling and mention same date (sd) E. Bossy.

3rd July 1958

Sitting of Thursday 3rd July 1958 before His Lordship R.S.Rassool, Ag. C.J., assisted by the undersigned Registrar. Messrs.Thomas and Loizeau for Plaintiffs. Mr. Valabhji for defendants. Court delivers written ruling filed of record allowing the amendment of the S. of C. as prayed for and as per amendment filed of record. Defendants will be at liberty to have their defence amended. Mr. Valabhji: I would like a delay to amend my defence. Court: Defence by 17 July for amended defence and mention same day at 9 a.m. (sd) E.Bossy.

No.14

Ruling.

No.14

Ruling
3rd July 1958

IN THE SUPREME COURT OF SEYCHELLES. ANTOINE CHOPPY V/S MERICIA ANGELA CHOPPY & ORS. Civil Side No. 30/58. RULING. The Plaintiffs have filed an amendment to para.9 of their Statement of Claim and to the prayer of the Plaint. To this amendment Counsel for Defendants objects on four grounds: (1) The purported amendment substituting sub-section (d) of para.9 of Plaint does not read well. (2) The amendment seeks to substitute the purported marriage itself for the purported acceptance to

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continued

the act of marriage. (3) The amendment alleges that the de cujus was not in possession of his mental faculties whereas the plaint relied on mental infirmity. (4) The plaint was directed against the act of marriage - legitimation being incidental - The amendment seeks to raise legitimation as an independent issue. From the nullity of the act of marriage the Plaintiffs are asking the nullity of the legitimation. Mr. Thomas Counsel for Plaintiffs argued that Defendants in para. 7 of Defence have denied para. 8 of Plaint and have therefore taken the issue of the legitimation. He referred to the powers vested in the Court under S.150 of the Civil Procedure Code which are very wide and mandatory. He stated that the purpose of the amendment is because it is not clear whether the nullity of the marriage will entail nullity of legitimation. The amendment will not convert the suit into another and substantially different in character. As regards the first objection the plaintiffs have filed a new amendment to the statement of claim. As regards the other three objections I do not think that the purported amendments if allowed will convert the suit into another and substantially different in character. There were two distinct declarations sought by Plaintiffs in the original plaint: (1) Para. (c) of the original prayer of the plaint was to the effect that any entry made by the Civil Status Officer in the act of births of Defendants No. 3, 5, 6, 7 and 8, and the minors Andrea, Mary, Benjamin, Robert and Michel pretending to show that they have become legitimated in consequence of the marriage be erased from their respective acts of birth. (2) Para.(a) of the original prayer is for a declaration that the act of marriage of Augustin Choppy with Mrs.Mericia Bibi be declared null and void. It is clear from the pleadings that the real questions in controversy between the parties is about both the act of Marriage and the legitimation of certain defendants and minor children of Defendant No.1. The new sub-paragraph (d) of para 9 sought to be substituted may at first sight appear to be a different ground for declaring the act of marriage null and void, but when read with the other paragraphs of the plaint it only amounts to an alteration in words and not in substance. This amendment may amplify the reason for the declaration but it does

not change the character of the suit. In view of the provisions of Section 150 of the Civil Procedure Code I allow the amendments prayed for by the Plaintiffs. The Defendants will have the right to amend their defence if they so wish. Read out in Court (Sd) R.S.Rassool, Ag. Chief Justice. 3 July, 1958.

No.15

AMENDMENT TO DEFENCE

IN THE SUPREME COURT OF SEYCHELLES. - In Re: Antoine Choppy & Or. Plaintiffs versus Mrs. Angela Mericia Choppy & Ors. Defendants. Civil Side No.30/58. AMENDMENT TO THE STATEMENT OF DEFENCE. By substituting the following sub-paragraph for sub-paragraph (d) of paragraph 8 of the Defence :- "(d). Defendants deny that at the time of the marriage Augustin Choppy was suffering from mental infirmity or was not in full possession of his mental faculties. Defendants deny that Augustin Choppy did not know the nature and quality of his marriage and its consequences. Defendants aver that Augustin Choppy fully knew and understood that on the 2nd November 1957 he was contracting marriage with the 1st defendant and he intended that that marriage would legitimate all the children he acknowledged at the time of the marriage." Dated at Victoria, Mahe, this 15th day of July 1958. (sd) R. Valabhji, Attorney for Defendants.

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No.16

REGISTRAR'S NOTES

No. 16

Registrar's Notes 17th July 1958

Sitting of Thursday 17th July 1958 before His Lordship R.S.Rassool, Ag. C.J., assisted by the undersigned Registrar. Messrs. Loizeau and Thomas for Plaintiffs, Mr. Valabhji for Defendants. Mr. Valabhji: I have filed the amended defence. Court: Adjourned to 7th August 1958 at 9 a.m. for arguments on points "in limine". (Sd) E. Bossey.

No.17

No.17

REGISTRAR'S NOTES

Registrar's Notes 7th August 1958

Sitting of Thursday 7th August 1958 before His Lordship R.S. Rassool Ag. C.J. assisted by the undersigned Registrar. Messrs. Loizeau and Thomas for Plaintiffs, Mr. Valabhji for Defendants. Mr. Valabhji: My arguments are on 3 grounds. (1) No right of action. (2) It is against public order. (3) The grounds are not valid for claiming this action. Refers to 4 of S. of C. (reads) - stresses the word "document". Refers to word "Document" in paras. 4 (a) and 9 of S. of C. Action directed against an act of Civil Status drawn up by a minister of religion who is also an officer of Civil Status. No allegation that marriage is void or even voidable. No allegation that they are attacking the marriage. Submits marriage is distinct from act of marriage which evidences the act of the marriage and the acknowledgment of the children. Cites Baudry de Lacantinerie Vol. III page 309 and 532, 534 (Reads) If the act is declared null and marriage falls. Cites Laurent Vol: II pages 353, 550 (Reads). Before this act, the marriage was complete by the consent of the parties. It is clear from the S. of C. that they are attacking this act alone. To have a right of action one must be given it by the law. Refers to S.76 of Seychelles Code of Civil Procedure. S. of C. does not disclose any cause of action. Pl. must state what rights have been violated.

Cites Odgers at page 175 (Reads). No rights of plaintiffs have been violated by the act of marriage. Neither has this been alleged in the S. of C. Pls. are not the heirs of Augustin Choppy who by his Will has constituted the first Defendant his legatee and the other Defendants his heirs. All Defts. are beneficiaries under the Will. Pls. are not heirs and are not even heritiers reservataires. They have no rights nor interest for them to attack the Will. Pls. Grounds for claiming the annulment of marriage are set out in para. 9 of S. of C. Cites Laurent Vol. II page 41 para.28 (Reads). There is nothing which says that an act can be attacked by collaterals. Refers to Cap 26 Laws of Seychelles. S.111 (Penal Section) Cites also Sec.112. Refers to para.9(a) of particulars as amended. That deceased was in articulo mortis is not sufficient to annul the act. The priest was satisfied that Augustin Choppy was conscious. Refers to S.78 & 79 of Cap.26 (Laws of Seychelles) which lays down the conditions for marriages "in articulo mortis". There are 4 witnesses to the Act, 3 of whom have signed and 1 has put his mark. If the declaration that Augustin Choppy was in articulo mortis is false, then Pls. must proceed by inscription de faux. I do not know what they mean by para.9(a) of S. of C. Number of witnesses no relation to one's condition. Refers to 9 (b) of S. of C. which says Augustin Choppy did not sign the act but marked it. Refers to Sec. 29 Cap 26 Laws of Seychelles as to witnesses. Refers to Sec. 30 (2) Cap.26 Laws of Seychelles. 9 (b) therefore fails. Cannot be used to annul an act of Civil Status. Cites Laurent Vol.II page 36, 39 last 2 lines (Reads). Even if number of witnesses not sufficient act is not null. Cites Baudry de Lacantinerie Vol. III page 467 para. 1874 (Reads). Refers to paras.9 (c) & 9 (d) as amended of S. of C. This is the first attack on the marriage, not on the act. These paras. are directed against the marriage and not against the act. They are not claiming the annulment of the marriage but of the act. These paras. have no relation to S. of C. and should be struck out. 2 points arising now are: Has the procedure been followed and have the parties been properly joined. Rules of procedure laid down in Sec.23 of Cap.26 of Laws of Seychelles

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continued

which follows Sec. 45 of Code Civile. Cites Dalloz Code Civile Annote Art. 45. Procedure laid down in French Code of Civil Procedure as regards Inscription de faux is applicable to Seychelles. Cites Dalloz C.C.A. Vol. I Art. 45 Notes 56, 57 and 90 (Reads) Cites Laurent Vol. II page 49 para. 35. (Reads) Refers to S.23 of Cap 26 Laws of Seychelles. Procedure on this claim should have been by inscription de faux and on the question of procedure alone the claim fails. Since they are attacking the act and not the marriage Father Maurice who drew the act should have been joined as co-defendant. The present defendants have nothing to do in this case, and have been improperly joined as defendants. Father Maurice drew the act and is the best person to defend it. Submit claim should be dismissed, I am not abandoning my point on ordre public. Mr. Thomas (argues). On the question of Pl. having no right of action. Cites Desmolombes Vol.5 page 369 (Read). Para. 1. - On the merits - Defts. admit Pls. are brother and sister of Augustin Choppy. Cites Huc Vol. II pages 158, 159, 160. There are 2 actions but both being tried together. One is for nullity of marriage and the other for declaring the children illegitimate. If it has not been for the act of marriage, Pl's would have been the only heirs of Augustin Choppy and this is their pecuniary interest. If they have pecuniary interest they have right to contest the marriage. Cites Art.187 of the Civil Code which refers to Art. 184. "Interest ne et actuel" applies in this case. Cites Dalloz Code Civil (Art. 339) Note 41, 42, 43, 44, 61 and 62 (Reads). Cites Dalloz Jurisprudence Generale 1886 Part II page 261. (Reads). Part of the children were grown up children who were legitimated a long time after their birth, when the man was said to be about to die. Pls. have interest in the succession which have been denied them. The Pls. have also a moral interest as regards the dignity of the family. There is a case in Court for the declaration of the Will as invalid. For the acknowledgement of the children I am allowed to sue on moral grounds. Cites Planiol Vol. II, para. 852 page 720 (Reads). Fuzier-Herman Supp. Code Civil Vol. I Art 339 page 442 para.7 (Reads). It is clear that without any pecuniary interest,

legitimation can be attacked. We shall bring evidence to show how this legitimation has impaired the respectability of the family. Cites Dalloz 1895 Part II page 231 (Reads). Producing evidence to show that when ceremony was performed Augustin Choppy did not have the proper use of his faculties. Cites Dalloz Supp. au Repertoire Vol. X page 421 para. 271 (Reads). Para. of S. of C. shows the INTEREST of the Plaintiffs. Question of "cause of action" was never raised in the points in limine. He cannot raise other points in limine without giving me notice of them. "Right of action" is different from "cause of action". I ask for leave to add a new para. 3 (a) after para.3 of S. of C. as follows :- Had it not been for the alleged wills made by the deceased dated 2 November 1956, 15th February 1957 and the 10th of May 1957 which are at present being attacked and are now sub-judicae and the purported act of marriage, the acknowledgement and legitimation dated November the 2nd 1957 the Plaintiffs would have been entitled to the whole succession of Augustin Choppy their brother on his death on November the 12th 1957. Mr. Valabhji: The amendment should not be allowed at this stage after I have closed my arguments which were based on the Pl's having no interest in this case. It is the first inkling we have of the word "acknowledgement" in the whole S. of C. Mr. Thomas: The word "acknowledgement" is copied from the act of marriage itself. The case has not yet started and the 3 points in limine do not raise the point that we have no cause of action. Court: Although the amendment comes late, the case itself has not started. The action seeks a double relief for the nullity of the act of marriage and secondly the legitimation of the children. In view of the powers granted to the Court under S. 150 of the C.P.C. as the amendment is not going to change the character of the suit but merely to amplify it, I will allow the Pl. to amend their S. of C. by adding this new para.3(a) subject to the rights of the Defts. to amend their defence if they wish and to have the right of reply in view of this amendment to the pleas raised in limine, as I find it is necessary to determine the real questions in controversy between the parties.Cost of the day

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against Plaintiffs. Adjourned to 12.8.58 at 9 a.m. for continuation of arguments and reply. (sd) E.Bossy.

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Registrar's Notes
7th August 1958
continued

12th August 1958

Sitting of Tuesday 12th August, 1958 before His Lordship R.S.Rassool, Ag. C.J. assisted by the undersigned Registrar. Messrs. Loizeau and Thomas for Plaintiffs. Mr. Valabhji for Defendants. Court: Case adjourned to 19th August 1958 at 9 a.m. for continuation. (sd) E. Bossy.

19th August 1958

Sitting of Tuesday 19th August 1958 before His Lordship R.S. Rassool, Ag. C.J. assisted by the undersigned Registrar. Messrs.Thomas and Loizeau for Plaintiffs. Mr. Valabhji for Defendants. Mr. Valabhji: Last time my friend amended his S. of C. and I was told that I would be allowed to file an amendment to my defence. I now want to add an amendment to my points in 'limine litis' Mr. Thomas: One of my points last time was that there was no point raised that we had no cause of action and this amendment cannot be made now. The pleadings say clearly that Pls. have no right of action. Refers to S.95 of C.P.C.1919. Court: It is a bit late to add a 4th para. to the points in limine. Amendment of para.3 (a) of defence is allowed Mr. Thomas: continues to argue. When it comes to annulment of marriage French law should apply. Cites M.R. 1949 - Ex parte Weng Sang Tai at p.183. The local Ord. on marriage is largely procedural. Mr.Valabhji: I say S. 23(2) of Cap.26 should be followed. I have not said that the marriage was attacked and I did not argue it. Mr. Thomas: Mr.Loizeau will reply to that. Cites Dalloz Jurisprudence Gen. 1921 p.31 (part 1) Art.322 (Reads) Dalloz Jurisprudence Generale part 1. 1870 at p.241. This reiterates the fact that anybody who has interest in the honour of the family can bring an action. Dalloz Jurisprudence Generale 1877 - 2nd part p.95. We are going to argue that the conditions for a "marriage in articulo mortis" are the same as those required for a marriage "in extremis". Cites Dalloz Jurisprudence Generale 1877, part 2 at p. 95 Dalloz

Jurisprudence Generale 1872 part 2 p.109. Mr. Loizeau continues the arguments for Pl. 1st point is on word "document" raised by the Deft. It is a document which is alleged to have been signed by three witnesses who are persons sought to be legitimated, the priest and also a mark affixed in the name of the husband of the witness Vve. Aurelius Uranie. Document is an Act drawn by any person which carried an obligation. The marriage was made under S.81 of Ord.4 of 1893 (S.78 of Cap.26). There have been three things in that document i.e. 1st the marriage, the acknowledgement and the legitimation. Next point is that of "Inscription de faux" refers to Cap.26 and submits that nowhere in this Ord. it is said that "Inscription de faux" should be resorted to. Refers to ss.103 and 104 of Cap.26 of Laws of Seychelles. We have entered the present proceedings under S.103 of Cap.26. My right of action comes to be born at the opening of the succession. Refers to M.R. 1916 pp.46 et seq. "Inscription de faux" - Soopramanien v/s Sawarsing & Ors. Cites Larombiere Vol.5, Ed. 1885 p.519 et seq. Our action is based on nullity. We say the document is null because the law was not complied with. Refers to Larombiere Vol. 5 p. 522 para. 7. We say the deceased did not have his mental faculties. Refers to declaration in act of marriage being attacked. Cites Larombiere Vol. 5 p.524 para.9. We have to come to Court because it is a "nullite relative". Refers to M.R. 1936 p.66 et seq. "Babajee Dapoojee v. Widow Sooneca Bapoojee & Ors." We say that the conditions laid down by law have been complied with. Cites Larombiere Vol.4 - 1857 at pp 252 note 9, pp.253, 254. The priest states that Choppy knew what he was signing but this can be destroyed by evidence. Fuzier Herman Vol. 3 Art. 1319 at p.315 note 46. I can prove by oral testimony without having resort to "Inscription de faux". Cites Fuzier Herman Supplement Vol.2 Art. 1319 p.1476 note 27. Dalloz 1907 part 1, p.95. The declaration recorded is that Mr. Choppy declared himself to be in "article de la mort". I have the right to contest this marriage for "vice de consentement". Consent is an essential element in a marriage. Refers to Laurent Vol. 2 p.563 para.440. Beudant des personnes Vol.1 p.385 p.388, para.276. The Court should know under what conditions is the

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marriage to be declared valid. In Dalloz 1855 part 2 p.342 the same principle is maintained. Dalloz Jurisprudence General on "nullite". I find no difference in the words annullment and cancellation used in Cap.26 of Laws of Seychelles. Refers to s.103 of same Cap.26. Refer to S.29 of same Cap.26 as to witnesses - also s.79. We shall show that Choppy married on the 2nd, proceeded to La Digue where he died on the 12th and therefore was not in "articulo mortis" on the 2nd. Three of the children who have been legitimated by the marriage have signed as witnesses. Cites Baudry Lacantinerie Vol.1 p.680 para.811. Cites Cap. 83 on Paternity & Filiation (s.3) - Refer to old and new s.331 of C.C. Mr. Choppy did not intervene at the declaration of birth of the children to acknowledge them. Mr.Choppy had the right to acknowledge the children by notarial deed. The children who are legatees under the wills which have been impugned before this Court have interests in the marriage and it is to their benefit that they should be legitimated. Doctors and witnesses will be called to show that it was because of "extreme epuisement" that Mr. Choppy could not sign. Refers to M.R.1953 at pp 37, 42, 43, 44 as to marginal notes. (Head note). Legislator makes a distinction between signing and marking. If Mr. Choppy could sign he should have done so. Refers to s.30 of Cap.26 of Seychelles Laws. Refers to s.79 of same Cap 26. The principle laid down in S.30 applied to S.79 and should have been complied with. Pere Maurice did not sign the act of marriage it is a nullity. "Ordre Publique" is laid down in S.1133 C.C. It is nowhere said in the Civil Status Ord. that an act cannot be attacked because it is an act against "Public Order". It is against common sense to say that asking for annullment of an act of Civil Status is against "Public Order". The law says that to attack a document set aside one must come to Court. Court: Adjourned to Friday 22 August 1958 at 9 a.m. for continuation of arguments by Mr. Loizeau and for reply by Mr. Valabhjee. (sd) E. Bossy.

22nd August 1958

Sitting of Friday 22 August, 1958 before His Lordship R.S. Rassool, Ag. C.J., assisted by the

undersigned Registrar. Mr.Thomas and Mr. Loizeau for Plaintiffs. Mr. Valabhji for Defendants, Mr. Loizeau continues his arguments. Nowhere in the Civil Status is it said that an act of the Civil Status cannot be attacked because it would be against "Public Order". Refers to Art. 1133 of C.C.Boyer Art. 1133 (list of authorities given and enunciation of "Ordre Publique"). Laurent Vol.II p.563 para.440. The case before Y.L. is an "Action en nullite". I submitted that it was a "nullite relative". Cites Dalloz Jurisprudence Gen. Vol. 32 p.779 para.3, 9, 16. We have to obtain a declaration by the Court to that effect. Dalloz 1891 part 2 p.129. In this case the Priest wrote what the parties declared to him. Out of the 10 children legitimated three of them are witnesses. I say they should not have been called as witnesses. The only other witness is a widow but the mark affixed is that of her husband who is dead. Refers to ss.30 & 70 of Cap.26 of Vol.I of Laws of Seychelles 1952. Mr. Choppy leaves for La Digue and died on 12th November. He was supposed to be in articulo mortis. - where is the proof that he was so - Cites Dalloz 1884 part 1 at p.229 Refers to S.750 C.C. on "Succession colaterale". Plaintiffs would have been entitled to the whole succession was it not for that marriage and for the wills which have been impugned. Deft. have contended we have no right of action. Cites Gaconnet et Cesar Bru. Vol.1 p.538 para.361. The succession is open. The moment the succession is open it is open to the Plaintiffs at will. My interests exist from the moment of death. I could not have attacked the act of marriage before the death of Mr.Choppy as the succession was not open. If the Bibi children are legitimated they become heirs of the Plaintiffs by representation. Dalloz Jurisprudence Generale Vol. 1, Verbo action paras 28, 33 at p. 226. In my case it is an "interet pecuniaire" Larombiere Vol.4 under Art. 1319 - "Authenticite & Inscription de faux". I submit the cause of nullite here are 1. No consent. 2. Choppy not in articulo mortis. 3. His mental faculties of which he was not in possession. 4. Witnesses incompetent. 5. Section 30 & 70 of Cap. 26 not complied with. It was not shown that he could not sign.

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Registrar's Notes 22nd August 1958 continued

6. That the witnesses could not create a title to themselves. I submit case should be allowed to proceed on the merits. There is no "Ordre Publique" in matters of marriage. Mr. Valabhji: From arguments of Plaintiffs, it would appear that what they are claiming is nullity of marriage & legitimation although this does not appear in the pleadings. I submit they have no right to ask for the nullity of the colateral marriage. They have no grounds of action. Pls. rely on Art.187 of C.C. which only comes into play if colaterals have an interest ne & actuel and the marriage must have been contracted in contravention of Article 184. Sections of Cap.26 of Seychelles Laws correspond with Articles of C.C. as follows. S. 42 of Cap. 26 which corresponds to Art. 146 of C.C. does not figure in Art. 184 and therefore no question of consent. Interet ne et actuel should have been expressly pleaded. Refers to new para. 3 (a) of S. of C. which defeats Pls. argument. Interests not only unborn but conditional. Pls. have no interests ne et actuel as under C.C. 187. Even if they had they could only ask for nullity under 184 which cannot help them. Cites Sirey Recueil General de Lois & Arete 1821 p.359, 9 Janvier 1821 note 3. Augustin Choppy is supposed to have been mentally infirm and his colaterals are attacking his marriage. Sirey 1845 Vol. 1 p. 246, 254. Sirey 1852 Vol. II p. 488. 561. Deals with para. 9 of S. of C. Refers to ground 9 (a). Reads S. 79 of Cap.26 as to witnesses to a marriage in "articulo mortis". Presence of a doctor not required. It says either a Doctor and one witness or 4 witnesses. Refers to ground 9 (b). No text of law disqualifying children from being witnesses to marriage of their parents. Dalloz Rep. Pratique Verbo "Acte de l'Etat Civil" Notes 63 & 64 - Verbo Mariage Note 403. Refers to s.29 of Cap.26 of Seychelles Laws What is required of a witness is only that he should be over 21. Refers to s.30 of same Cap.26, also s.79 (1). Choppy did put his mark. Dalloz Rep. Pratique Verbo Mariage - Notes 410 - 483. Demolombe - Tom III No. 214. Laurent Tom. 2 Nos 428 & 429 & Tom III. No. 4 (Grenoble 5 Avril 1824. This is on signature of Civil Status Officer - Revue 24 Juillet 1820).

Planiol & Ripert Droit Civil Vol. 2 - Heading "La famille" p.195 No.245. I say it does not matter if the form of marriage was not signed by Pere Maurice. Dalloz Repertoire Pratique "Verbo Mariage" No.566. Refers to Mr. Thomas' remark that the local Matrimonial Causes Ord. is mainly procedural. Refers to Marginal note of s. 103 of Cap. 26. (Seychelles Laws) S.103 of Cap.26 should be read with Articles 184 & 187 C.C. - Refers to Mr. Loizeau's submission that the mark on the act of marriage was that of Aurelius Uranie instead of Vve. Aurelius Uranie. Cites Art. 32/1 of Cap.26. (Seychelles Laws). Cites Laurent Vol. II p.39. Baudry Lacantinerie. Vol. 3 p.467 para. 1874. This cures everything, even if Choppy had not signed it would not have mattered. Refers to ss.107, 108, 109 & 110 of Cap.26 (Seychelles Laws) as to incomplete acts. The absence of the signature of Father Maurice can be covered by an Order of Your Lordship. On question of legitimation - Cites s.3 of Cap. 83 Laws of Seychelles at p.980 which repealed Art. 331 of C.C. Baudry Lacantinerie Vol. 4, p. 443 - Plaintiffs should have attacked the acknowledgement & not the legitimation. Apart from the prayer at the end of S.of C. the legitimation is nowhere in issue in the S. of C. This should have been specifically pleaded. Dalloz C.C. Annote Art. 339 Nos. 43, 44. We do not know on what grounds pl. are asking for the legitimation to be annulled. Probates 1948 p.19 Colquitt v. Colquitt. Submits Art. 337 of C.C. must be read in conjunction with s.15 of Cap.91 (Laws of Seychelles) Art.1319 of C.C. has no relation with marriage. Art. 180 C.C. has also nothing to do with the present case. This art. applies to where one of the parties asks for nullity. Dalloz Code Civil Annote on article 180 note 3. Mr. Loizeau says that this marriage is null but he does not say that this marriage is non existent. Art. 183 note 105 correspond to Art. 180 Note 3. What the witnesses have witnessed was the marriage and not the acknowledgement or the legitimation. Mr. Loizeau suggested that the marriage was done to deprive the colaterals from the succession. I say that this was not so as at the time of the marriage the children were also legatees under the will of the whole succession of Mr. Choppy. They have not got the pecuniary interests

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required under articles 187 & 339 of C.C. In order to attack the acknowledgement they should have done it on the grounds laid down in Article 339 notes 65, 66 & 67, 92 & 93. This shows that the acknowledgement should have been put in issue. Submits Pls. have no right to attack marriage of their colaterals under the C.C. and that in any case the grounds on which they rely are insufficient to invalidate the marriage or legitimation. Mr. Loizeau: The clergyman ought to have signed it. There is no signature to attest the marriage. S.108 of Cap.26 cannot be invoked now. Refers to S.72 of same Cap.26 which says that the Civil Status Officer should sign the act. I could not enter any claim against the acknowledgement because it is one & the same act in the marriage. Notwithstanding Art. 187 I am entitled to attack the deed. The point that has been raised that the law has not been complied with is not to be seen under Art. 184 C.C. Mr. Valabhji: Art.72 of Cap. 26 (Seychelles Laws) corresponds with Art. 75 C.C. Cites Laurent Vol. II articles 428, 429. Court. Ruling reserved for a date to be notified to the parties. (sd) E. Bossy.

7th October 1958

In Chambers on 7th October, 1958 - Present: Messrs.Thomas and Loizeau for Plaintiffs. Mr. Valabhji for Defendants. Court. The ruling on the pleas in limine raised by the defendants was to be given by me. In view of the limited time left until my departure on 16th December and in view of the numerous part heard cases and those awaiting Judgment which I must finish before my departure I find there is no point in my giving a ruling on points raised because were I to rule that the case should proceed I will have no time to hear the evidence on the merits and give judgment, and the trial Judge may not agree to the ruling given. Mr.Loizeau: Mr. Justice Bonnetard cannot try this case because he was employed in another case of redition of account. Mr. Thomas: It is not for me to challenge. It is for the other side to do it if they wish. Mr. Loizeau: My two clients are very ill. Mr. Thomas: Should there be a possibility of Your Lordship staying

here after 15th December 1958 can we have the liberty to apply for the case to be put back on the list? Court. Certainly. Mr. Thomas, Mr. Loizeau & Mr. Valabhji inform Court that under the circumstances they agree with the course adopted by his Lordship. Court: Parties to be supplied with a copy of the notes of the argument. (sd) E. Bossy.

In the Supreme Court of Seychelles

No.17

Registrar's Notes 7th October 1958 continued

No.18

No.18

LETTER, DEFENDANTS' COUNSEL TO REGISTRAR, SUPREME COURT.

Letter, Defendants' Counsel to Registrar, Supreme Court 23rd October 1958

Ramniklal Valabhji, Barrister-at-Law, 23rd October 1958. The Registrar, Supreme Court. Dear Sir, Re: Choppy v/s Choppy (Marriage). I am instructed by my clients to say that they are agreeable to His Lordship the Acting Chief Justice giving the ruling on the points raised in limine in the above case. My clients will not object if Mr. Justice Rassool cannot continue the case on the merits, if that becomes at all necessary. Kindly let me know which date is fixed for the ruling. And please notify my clients - the defendants. Yours faithfully, (sd) R. Valabhji, Attorney for Defendants.

No.19

No.19

LETTER, PLAINTIFFS' COUNSEL TO REGISTRAR, SUPREME COURT.

Letter, Plaintiffs' Counsel to Registrar, Supreme Court 24th October 1958

James E. Thomas, LL.B., Attorney-at-Law, Queen's Buildings, Victoria, 24th October, 1958. The Registrar, Supreme Court, Victoria. Dear

In the Supreme Court of Seychelles

No.19

Letter, Plaintiffs' Counsel to Registrar, Supreme Court 24th October 1958 continued

Sir, Re: Choppy v/s Bibi. I am instructed by my clients to ask the Hon. Acting Chief Justice to give his ruling on the preliminary points raised. They will raise no objection if His Lordship finds it impossible to try the other issues in the case before His Lordship leave the Seychelles. Yours truly, (sd) G. Loizeau (sd) James E. Thomas, Attorneys-at-Law.

No.20

Registrar's Notes 11th November 1958

No.20

REGISTRAR'S NOTES

Sitting of Tuesday 11 November 1958 before His Lordship R.S. Rassool, Ag. C.J. assisted by the undersigned Registrar. Messrs. Thomas & Loizeau for Plaintiffs. Mr. Valabhji for Defendants. Court. delivers written ruling filed of record finding that the 3 pleas raised "in limine" fail and that the case should proceed on its merits. Mr. Thomas I move for costs. Mr. Valabhji: I object to granting of costs at this stage. Court. I will make no order as to costs at this stage. The costs should abide the events when the case is heard on its merits. Mention on 27.11.58 at 9 a.m. (sd) E. Bossey.

No.21

Ruling 11th November 1958

No.21

RULING

IN THE SUPREME COURT OF SEYCHELLES - CIVIL Side No.30 of 1958. Antoine Choppy & Or. versus Mrs. Mericia Angela Choppy & Ors. RULING. The defendants have raised three pleas in limine litis in their defence. After defence was filed Plaintiffs prayed for an amendment to their plaint by substituting sub-para. (d) of paragraph 9 of the Plaint and by adding a fourth prayer to paragraph 10 of

the Plaint. On the 3rd July 1958 I allowed the amendments as I considered they did not change the character of the suit. On the original plaint there were two distinct declarations sought by Plaintiffs in their prayer in paragraph 10 of the Plaint: (1) that the act of marriage be declared null and void, (2) that any entry made in the act of births of certain of the Defendants pretending to show that they have been legitimated be erased from their respective acts of births. The amendment sought to the prayer is by adding: "That the purported legitimation of certain Defendants be declared invalid in law". The three pleas in limine are as follows : (1) The Plaintiffs have no right of action in law to have the document of the 2nd November 1957 declared null and void and therefore the action must be struck out. (2) The above action is against public order and therefore should be struck out. (3) The grounds set out in paragraph 9 of the Claim for claiming the document of the 2nd November 1957 to be null and void are not sufficient to annul a marriage contracted in accordance with law and the action must be dismissed. These points were fully argued by counsel on both sides on the 7th,19th and 22nd August and I reserved my ruling. Due to unforeseen circumstances beyond my control it had not been possible to give this ruling at an earlier date. The parties through their counsel fully realising that I cannot in view of my imminent departure from this Colony, try this case on the merits have consented and are agreeable that I should give only this ruling on the points raised in limine irrespective of the trial on the merits. As regards the second point viz. "That the above action is against public order and therefore should be struck out". I can dispose of this plea first. Counsel for Defendant did not address me on this point, nor did he quote any authority to the Court showing that this action is against public order. Article 1133 of the Civil Code does not prohibit such an action. In view of this I hold that this plea fails. As regards the first point. "Plaintiffs have no right of action". Defendant's point can be summarised briefly as follows :- (1) The procedure followed to attack the act of marriage is wrong it should be by "inscriptio falsi" and under the provisions

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No.21

Ruling 11th November 1958 continued

of Section 23 of Civil Status Ordinance (2). Plaintiffs being collaterals of the deceased have"no interest ne et actuel" and have no right to attack the marriage of their collaterals. (3) The averments in the plaint do not disclose a cause of action. First as regards the procedure followed. Plaintiffs have filed an action praying inter alia that the act of marriage be declared null and void. It is clear that Section 23 of the Civil Status Ordinance which is probably derived from Article 45 of the Civil Code must be read with Section 103 of that Ordinance. The second paragraph of Section 103 reads as follows :- "Nothing herein contained shall prevent any interested person from asking by action before the Court of Seychelles for the rectification or cancellation of any act". "Act" in Section 2 of the Ordinance is defined as an act of the Civil Status. In view of this I hold that under the provisions of Section 103 above quoted any interested person may ask by action before the Supreme Court for the rectification or cancellation of any act. The question the Court has to decide is: Are the Plaintiffs interested persons? The Plaintiffs are asking that the act of marriage made on the 2nd November, 1957 be declared null and void. Such a declaration if granted would ipso facto cancel the act of marriage. This act of marriage in articulo mortis is made conformably with Section 78 et seq of the Civil Status Ordinance. Not only is it an act of marriage but in the present case it is an act by which the parties to the marriage acknowledge as their children in order that they may be legitimated as if they had been born in marriage those children mentioned in column 9 of the Act. The Plaintiffs are also asking for the rectification of the act of births of certain of the Defendants should there be an entry in those acts mentioning that these Defendants named "Bibi" have become legitimated by the above act of marriage be erased from their respective acts of birth. Defendants' Counsel, Mr. Valabhji, has argued that Plaintiffs have not an "interet ne et actuel". In view of the provisions of Articles 184 and 187 Civil Code he argued that the collaterals - and the present Plaintiffs are the brother and sister of

the deceased - even if they had an interest could only have a right of action if the marriage had been celebrated in contravention of Articles 144, 147, 161, 162 and 163 of the Code Civil. Article 146 about consent has been purposely left out in Article 184. Plaintiffs' counsel have argued that on the death of deceased Augustin Choppy the succession was open and but for the marriage of deceased to Mericia Bibi and the acknowledgement and legitimation dated 2nd November 1957 they would have been entitled to the whole succession of Augustin Choppy. In other words until the wills are declared null and the above act of marriage is annulled they would not be heirs entitled to the succession of the deceased. It would appear from the combined texts of provisions of Articles 184 and 187 of the Civil Code that collaterals - here - plaintiffs - have no right to attack the marriage of the deceased. If this action was only about the cancellation of the act of marriage I would be inclined to hold that the Plaintiffs have no right of action but the authorities however are conflicting. Vide Huc. Vol. 2 p.158 para.137 and 138 and 160. Fuzier Hermann Article 184 Note I. But as I have said before Plaintiffs in this action are seeking two things. (1) the cancellation of the act of marriage of the 2nd November, 1957. (2) that the legitimation of the children of Mericia Bibi be declared invalid in law and the entries to that effect in the Civil Status Register be erased. There are therefore two separate issues:- I have dealt with the first relief sought. Now with regard to the second relief about legitimation. This is incidental to the marriage. It must be remembered that the marriage in question is not an ordinary marriage but a marriage in "articulo mortis" which by itself acknowledges the children named in the act so that they may be legitimated. Assuming the Plaintiffs as collaterals had no right to attack the marriage could they attack the acknowledgement and legitimation in the acts of birth. This falls under Article 339 of the Civil Code, Art.339. "Toute reconnaissance de la part du pere et de la mere, de meme que toute reclamation de la part de l'enfant pourra etre contestee par tous ceux qui y auront interet". The question for decision is:

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No.21

Ruling 11th November 1958 continued

Have the Plaintiffs an interest in order to make such a claim. It is clear from the authorities cited that this interest need not be a pecuniary interest but even a moral interest founded on the interest of the family and on the honour of the name. Art. 339. Boyer Code Civil Annote. Dalloz Jurisprudence Generale 1870. 1.241. De Bastard d'estang C de Bastard d'Estang. Dalloz 1895 2. 231 1887 2.95 De Cibeins v/s De Cibeins. It is admitted by Defendants that Plaintiffs are the brother and sister of the de cujus Augustin Choppy. In the light of these authorities I hold that the Plaintiffs as Collaterals need not have a pecuniary interest to attack the acknowledgement and legitimation of some of the Defendants, a moral interest suffices under Art. 339 of the Civil Code provided that that interest is actual and established founded on the dignity of the family and honour of the name. In the instant case I find that the Plaintiffs have such a right as they have such a moral interest i.e. that the Defendant's children born Bibi do not bear the name of Choppy. The first plea therefore fails. As to the third plea in limine viz. That the grounds contained in paragraph 9 of the Plaint are not sufficient to annul the marriage. Under this head Defendant's counsel has argued that the marriage was contracted in accordance with law and is perfectly valid. He has also argued that these grounds do not disclose any cause of action. As I have said before the annulment of act of marriage is not the only relief Plaintiff is seeking in this case. Even if the grounds in paragraph 9 of Plaint are not sufficient this is no reason for the Court to strike out the pleading under Section 97 of the Civil Procedure Code. It is only after evidence has gone into that the Court can decide whether there is a reasonable cause of action or not. vide Bessin v/s A.G. of Seychelles 1951 M.L.R. 176. As there is another relief sought viz the declaration that the acknowledgement and legitimation of the children be declared invalid I rule that the action cannot be dismissed on this third plea as raised, as it does not dispose of the whole cause of action there being other issues for decision. The three pleas raised "in limine" therefore fail and I rule that the case should proceed on its merits. Read out in Court. (sd) R.S.Rassool, Ag.Chief Justice, 11th November, 1958.

No.22

PLAINTIFFS' LETTER CHALLENGING THE JUDGE.

In the Supreme Court of Seychelles

No.22

Plaintiffs' Letter challenging the Judge 27th November 1958

Victoria, Mahe, 27th November, 1958. His Lordship F. Bonnetard, Q.C., Chief Justice of Seychelles. Your Lordship, We are the Plaintiffs in the Nullity of Marriage case between Mericia Bibi and Augustin Choppy, our brother and Nullity of the Legitimation of the Children of Mericia Bibi by Augustin Choppy, as recorded in a document, of the 2nd November, 1957. This Suit bears Number C.S.30 of 1958. We are also the Plaintiffs in the Nullity of the three Wills of Augustin Choppy which are contested by us; this Suit bears Number 75 of 1958. France Morel du Boil, Testamantary Executor of Augustin Choppy, under his (Augustin Choppy Wills) has claimed from me Antoine Choppy, the sum of Rs. 10,000/- alleged to belong to the succession of Augustin Choppy: Civil Side No.39 of 1958. In January 1957 an Action in reddition of account was entered by your petitioners as Plaintiffs against Augustin Choppy; this suit bears Number C.S. 2 of 1957. In the Reddition of account Suit, Your Lordship was one of our Counsel and received as Honorariums from us a very substantial sum. Eventually our brother, Augustin Choppy died on the 18th November, 1957, and that Suit has been adjourned Sine Die. That Reddition of account case is linked with both Cases: Nullity of Marriage and Legitimation and Nullity of Wills - in this sense that the parties who claim to be entitled to the succession of our brother Augustin Choppy, are the children of Mericia Bibi and if we fail in the Nullity of Marriage and Legitimation, they become heirs. On the other hand, if we succeed in the above action, there still remains the Wills Case to be decided. If the children Bibi are successful, they will have to be joined as Co-Defendants in the Reddition of account case. We find that those three Suits: Nullity of Marriage and Legitimation, Nullity of the Wills and Reddition of Account are linked together. We therefore respectfully and humbly pray that Your Lordship should challenge himself in the Nullity of Marriage and Legitimation Suit, as well as in the Nullity of Wills

In the Supreme Court of Seychelles

No.22

Plaintiffs' Letter challenging the Judge 27th November 1958 continued

Suit. The present application is made in conformity with Section 22-26 of the Seychelles Code of Civil Procedure.
(sd) Antoine Choppy, (sd) Louise Choppy, Petitioners.

No.23

Registrar's Notes

No.23

REGISTRAR'S NOTES

27th November 1958

Sitting of Thursday 27 November 1958 before His Lordship N.P.F.Bonnetard, Chief Justice, assisted by the undersigned Registrar. Messrs. Thomas & Loizeau for Plaintiffs. Mr.Valabhji for defendants. Court. I will have to hear counsel on the points raised in limine. Case adjourned to 23rd February 1959 at 9 a.m. for arguments on points in limine (sd) E. Bossy.

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19th February 1959

Sitting of Thursday 19th February, 1959, before His Lordship N.P.F. Bonnetard, Chief Justice, assisted by the undersigned Registrar. Messrs. Thomas & Loizeau for Plaintiffs. Defendants. leave default. Court. Mr. Valabhji being absent from the Colony on short leave, Counsel for Plaintiffs have no objection to the case being adjourned sine die. Case is adjourned sine die. Court remarks that the case has been taken today instead of on the 23rd February as it was brought to its notice that Mr. Valabhji would not be back on the 23rd February.
(sd) D. Ah-Lock, Asst. Registrar.

Chambers: In this case His Lordship the Chief

Justice challenged himself and challenge was confirmed by His Excellency the Governor on the 22nd June 1959 (sd) D. Ah-Lock, Ag. Registrar, 23.6.59.

In the Supreme Court of Seychelles

No.23

Registrar's Notes 19th February 1959 continued

10th July 1959

Sitting of Friday 10th July, 1959, before His Lordship E.N.Taylor, Judge ad hoc assisted by the undersigned Registrar. Messrs.Thomas and Loizeau for Plaintiffs. Mr.Valabhji and Mrs. Collet for Defendants. Mr.Thomas: A point in limine was argued before Mr. Rassool and Mr.Rassool ordered that the case should proceed on its merits. I submit that the case should now proceed on its merits. Mr. Valabhji: I disagree with Mr. Thomas and I beg leave to make a formal motion for the Court not to take cognizance of the proceedings which took place before Mr. Rassool. Court: Case is adjourned to the 10th of August 1959 at 2 p.m. to hear motion. Mrs. Collet to serve motion paper and affidavit on other party by 3rd August 1959. Mrs.Collet: May I ask that all the amendments made to the statement of claim before Mr. Justice Rassool be redrawn and consolidated in one single document and a copy served on me. Court: On the application of Mrs.Collet for Defendant it is ordered that the S. of C. in its amended form be redrawn and showing the amendments and a copy of the amended plaint given to the defendant. Costs to be costs in the case. (sd) D. Ah Lock, Ag. Registrar.

In the Supreme Court of Seychelles

No.24

Defendants' Notice of Motion 10th July 1959

No.24

DEFENDANTS' NOTICE OF MOTION

First Motion. IN THE SUPREME COURT OF SEYCHELLES - In re: Choppy and or v/s Choppy and others. C/S 30/1958. To the Plaintiffs :- Notice of Motion. Take notice that this Honourable Court will be moved on the 10th of August, 1959 or so soon as counsel can be heard, for an order that the Statement of Claim in the said case be set aside and the plaint dismissed, on the grounds set out in the affidavit copy of which is served with this notice. Dated this 10th July, 1959, (sd) M.C.Collet, Attorney for the defendants.

First Motion - IN THE SUPREME COURT OF SEYCHELLES. In re: Choppy and Anor v/s Choppy and Ors. Nullity of Marriage. C/S 30 of 1958 MOTION PAPER Counsel is instructed to move this Honourable Court for an order striking out the Statement of Claim in the above action, on the following grounds :- 1. The suit was entered as an action under the Code of Civil Procedure 1919, and not as a petition supported by affidavit, and no affidavit was served on the defendants. 2. The suit should have been entered as required by the Matrimonial Causes Ordinance and the Rules made thereunder by proclamation, as it is in reality, under the disguise of an action for cancellation of an ACT of the Civil Status, a request for a decree of nullity of marriage. 3. The Court has no jurisdiction to entertain the action filed otherwise than as required by the Matrimonial Causes Ordinance. (sd) M.C. Collet, of Counsel for the defendants. Dated this 10th July, 1959.

No.25

Affidavit in support of No.24 10th July 1959

No.25

AFFIDAVIT IN SUPPORT OF NO.24

First Motion. IN THE SUPREME COURT OF SEYCHELLES - In re: Choppy v/s Choppy. Nullity of Marriage - C/S No.30/58. Affidavit, I Mericia Angela Choppy a Defendant in the above case, make oath and say as follows: I AM ADVISED BY COUNSEL: 1. That the suit abovenamed and numbered was served on me as an action under the

Code of Civil Procedure. 2. That the said suit was not entered as a petition under the Matrimonial Causes Ordinance, and no petition accompanied by affidavit in support was served on me. 3. That the said suit is for a declaration of nullity of marriage, and should have been entered as required by the Matrimonial Causes Ordinance and the rules thereunder. Sworn by the above named deponent this 10th day of July, 1959, Before me, (sd) D.Ah-Lock, Ag. Registrar of the Supreme Court. (sd) Mme Vve. Aug. Choppy, Deponent.

In the Supreme Court of Seychelles

No.25

Affidavit in support of No.24 10th July 1959 continued

No.26

AMENDED STATEMENT OF CLAIM

No.26

Amended Statement of Claim 9th April 1958 (Registered 23rd July 1959)

IN THE SUPREME COURT OF SEYCHELLES - Antoine Choppy and Louise Choppy both of La Digue. Proprietors. Plaintiffs versus 1. Mrs. Mericia Angela Bibi, who calls herself Mrs. Mericia Angela Choppy, the widow of Augustin Choppy which name of Chcppy and her status of widow of Augustin Choppy are neither recognised nor accepted and is repudiated by the Plaintiffs. 2. Mrs. Mericia Angela Bibi, who calls herself Mericia Angela Choppy, the widow of Augustin Choppy, which name of Choppy and her status of widow of Augustin Choppy are neither recognised nor accepted and is repudiated by the plaintiffs, here acting in her capacity as legal guardian of the minors; Andrea Bibi, who calls himself Choppy, Mary Bibi, who calls herself Choppy, Benjamin Bibi, who calls himself Choppy, Robert Bibi, who calls himself Choppy and Michel Bibi, who calls himself Choppy, which name of Choppy taken by Andrea Bibi, by Mary Bibi, by Benjamin Bibi, by Robert Bibi, by Michel Bibi, either by themselves or through their guardian is neither recognised nor accepted and is repudiated by the Plaintiffs. 3. Auguste Bibi, who calls himself Choppy, which name of Choppy is neither recognised nor accepted and is repudiated by the Plaintiffs, acting in his own personal name. 4. Auguste Bibi, who calls himself Choppy, which name of Choppy is neither recognised nor accepted and is repudiated by the Plaintiffs, here acting in his capacity of sub-guardian of the minors; Andrea

In the Supreme Court of Seychelles

No.26

Amended Statement of Claim 9th April 1958 (Registered 23rd July 1959) continued

Bibi, who calls himself Choppy, Mary Bibi who calls herself Choppy, Benjamin Bibi, who calls himself Choppy, Robert Bibi, who calls himself Choppy, and Michel Bibi, who calls himself Choppy, which name of Choppy, Andrea Bibi, Mary Bibi, Robert Bibi, Benjamin Bibi, and Michel Bibi, have taken by themselves or through their guardian and which name of Choppy is neither recognised nor accepted and is repudiated by the Plaintiffs. 5. Harry Bibi, who calls himself Choppy, which name of Choppy is neither recognised nor accepted and is repudiated by the Plaintiffs. 6. Mad. Doly Bibi, who calls herself Choppy, which name of Choppy is neither recognised nor accepted and is repudiated by the Plaintiffs, the wife of Wesley Payet. 7. Luce Bibi, who calls herself Choppy, which name of Choppy is neither recognised nor accepted and is repudiated by the Plaintiffs, the wife of Benjamin Payet. 8. Noe Bibi, who calls himself Choppy, which name of Choppy is neither recognised nor accepted and is repudiated by the Plaintiffs. 9. Harry Bibi, who calls himself Choppy, which name of Choppy is neither recognised nor accepted and is repudiated by the Plaintiffs, here acting in his capacity of "TUTEUR AD HOC" of the minors: Andrea Bibi, who calls himself Choppy, Mary Bibi who calls herself Choppy, Robert Bibi who calls himself Choppy, Benjamin Bibi who calls himself Choppy, and Michel Bibi, who calls himself Choppy, which name of Choppy, Andrea Bibi, Mary Bibi, Benjamin Bibi, Robert Bibi, and Michel Bibi, have taken by themselves or through their guardian which name of Choppy is neither recognised nor accepted and is repudiated by the plaintiffs. 9. Defendants. All of La Digue Island. DEFENDANTS. STATEMENT OF CLAIM. 1, First Plaintiff is the brother "frere germain" of Augustin Choppy. Second Plaintiff is the sister "soeur germaine" of Augustin Choppy. 2. Augustin Choppy, died on the 12th November, 1957. 3. Augustin Choppy was until his death and together with Antoine Choppy and Louise Choppy, owners in full ownership of the following immovable properties; (a) The Island of "Marianne" one of the Seychelles Archipelago, of the extent of about one hundred and fifty acres. (b) A portion of land of the extent of about twenty-seven acres from which a plot of

two acres has been distracted and situated at La Digue Island. (c) A portion of land of the extent of about twenty-seven acres, situated at La Digue Island. The following immovable properties belong to the De Cujus "Augustin Choppy" for the whole. Land known under the name of "Terrain Naidoo". A portion of land of the extent of eleven acres situated at La Digue Island by the place called Anse Reunion and bounded as follows :- On one side by the sea shore; on the second side, by Clement Payet now Mrs.Olive Radegonde; on the third side by Mr. Frederic Payet, now Mr. and Mrs. Joseph Choppy; on the fourth side in the upper part, by the public road, which separates "separe" the said land. Land known under the name of "Terrain Payet". A portion of land situated at La Digue Island and bounded as follows:- Towards the East and South-East by the land of Hajee Mahomed Carrim Rassool; towards the North, by the land of Carrim Rassool and by the property of M'c Gaw and towards the West by the land of Capucin Beaubois and Evariste Payet. Land known under the name of "Terrain Maurice Payet". A portion of land situated at La Digue Island of the extent of eight acres (distracted from a land of twenty two acres and twenty seven perches) and bounded according to a memorandum of Survey of Alfred Avice Du Buisson, a Sworn Land Surveyor, dated the 29th and 1st July 1914 - towards the North; by the plot of land marked C in the Memorandum of Survey, by a line measuring one thousand seven hundred and ninety feet or 581 metres and 35 centi-metres, directed West 130. North towards the South by a plot of land marked A on one thousand seven hundred and twenty five feet or 579 metres and 75 centimetres; towards the East, by the heirs Jules Payet, on one hundred and ninety one feet or 62 metres; towards the West border "bord Ouest" of a marsh which borders the land of the heirs Abdool Rassool. Land known under the name of "Terrain Alex Payet". A portion of land situated at La Digue Island and bounded as follows:- On one side by the heirs Payet, on the second side by the same parties (heirs Louis Payet) on the third side, by the heirs Pondard and on the last side, by the heirs Abdool Rassool. Land known under the name of "Terrain K.C.Chetty". A portion of land situated at La Digue Island and bounded as

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follows:- On one side towards the North by Thomas Prera, towards the West by Edouard Constance; towards the South, by Jules Roaslie and towards the East by Clementine Cecile this land is of extent of one and a quarter acres. Land acquired from Abdool Rassool Hossen. a. A portion of land of the extent of one acre situated at La Digue Island and bounded as follows :- On one side by Furcy Morel; on the second side, by Arnold Dolphin; on the third side, by Ellie Boulle; and on the fourth side by Edouard Boulle. b. The bare ownership of the following lands situated at La Digue Island and bounded as follows :- On one side by Rosemond Payet; on the second side by Ellie Boulle or assigns; on the third side by Frederic Lamiral, and on the fourth side, by Celestin Marie. c. All the surplus of a land of four acres, situated at La Digue Island and bounded as follows:- On one side by Furcy Morel; on the second side by Ellie Boulle, and on the two other sides by the land of Dolphin. d. A portion of land of the extent of one acre situated at La Digue Island and bounded as follows:- On one side by Furcy Morel; on the second side, by Arnold Dolphin; the full ownership of a land of the extent of three acres, situated at La Digue Island and bounded as follows:- On one side by Ellie Boulle, on the second side by Rosemond Payet; on the third side by Federic Lamiral and on the fourth side by Celestin Morel. All the surplus of a land of four acres, situated at La Digue Island and bounded as follows:- On one side by Furcy Morel; on the second side by Ellie Boulle; and on the two other sides by the land of Dolphin. Land known as "Terrain Ernest et autre". A small portion of land situated at La Digue Island, place called Anse Reunion and bounded as follows:- On one side by the public road; on seventeen feet (English measure); on the second side, by the surplus of the vendors, on two hundred and sixty two feet (English measure) on the third side, by the surplus of the land of the vendors and by a line parallel to the first line, on the public road on seventeen feet; on the last side, by the land of the purchaser himself. Land known as "Terrain de Sylva". A portion of land of the extent of nine and half acres, situated at La Digue Island,

and bounded as follows:- towards the North by Alphonse Nageon; towards the South by the land of Paris Payet; towards the West on the sea-shore side, by Alphonse Nageon and towards the East by the mountain by Miss Sophie. The coaster "Marianna" of 6.26 tons nett-registered under No.40 (Number of Certificate). 4. On the 2nd November, 1957 Reverend Father Maurice, a Roman Catholic priest, executed a document which purports to show that Augustin Choppy was married by him, Father Maurice in "Articulo Mortis" to the first defendant, Mericia Angela Bibi. 5. In that document it is stated that Augustin Choppy acknowledged that Harry Bibi, Noe Bibi, Mad. Doly Bibi, Luce Bibi, Auguste Bibi, Andrea Bibi, Mary Bibi, Benjamin Bibi, Robert Bibi and Michel Bibi, were the children born of his intimate relations with the first defendant, Mrs.Mericia Angela Bibi, who was his concubine and remained his concubine until his death. 6. Harry Bibi, Noe Bibi, Mad. Doly Bibi, Luce Bibi, Auguste Bibi, Andrea Bibi, Mary Bibi, Benjamin Bibi, Robert Bibi, and Michel Bibi, are the acknowledged children of the first defendant, Mrs.Mericia Angela Bibi. 7. The respective acts of birth of the said Mary Bibi, Noe Bibi, Mad. Doly Bibi, Luce Bibi, Auguste Bibi, Andrea Bibi, Mary Bibi, Benjamin Bibi, Robert Bibi and Michel Bibi, show that they were registered as acknowledged natural children of the first Defendant, Mericia Angela Bibi. 8. The aim and effect of this document if it were valid and legal would make the Defendants; Harry Bibi, Noe Bibi, Mad. Doly Bibi, Luce Bibi, Auguste Bibi, Andrea Bibi, Mary Bibi, Benjamin Bibi, Robert Bibi and Michel Bibi, legitimated children of both Augustin Choppy and Mrs. Mericia Angela Bibi, the first defendant. 9. Plaintiffs aver that the document of the 2nd November, 1957, purporting to be an Act witnessing the alleged marriage of Augustin Choppy with the first Defendant which would carry with it the legitimacy of Andrea Bibi, Mary Bibi, Benjamin Bibi, Robert Bibi, Michel Bibi, Auguste Bibi, Luce Bibi, Mad. Doly Bibi, Noe Bibi and Harry Bibi, would purport to render them the legitimate children of Augustin Choppy is null and void in law for the following reasons:-
(a) That the conditions necessary for a marriage in "Articulo Mortis" did not exist. There was no legal proof that Augustin Choppy was in.

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"Articulo Mortis". His statement that he was in "Articulo Mortis" should not have been accepted. No medical practitioner and no competent witnesses in law being present. (b) That the formal requirements of the Civil Status Ordinance Cap. 26 were not complied with. The witnesses to the alleged Act of marriage were not competent witnesses in Law. Augustin Choppy did not sign the alleged Act of marriage. (c) That the said Augustin Choppy, before and at the time of the purported marriage was suffering from mental infirmity. (d) That at the time of the purported marriage, Augustin Choppy was, by reason of mental infirmity and not being in full possession of his mental faculties, unable to know the nature and quality of the purported marriage which was intended also to legitimate the children of Angela Mericia Bibi: viz. Auguste Bibi, Harry Bibi, Mad. Dolly Bibi, the wife of Wesley Payet; Luce Bibi, the wife of Benjamin Payet; Noe Bibi, Andrea Bibi, Mary Bibi, Benjamin Bibi, Robert Bibi and Michel Bibi. 10. Wherefore the Plaintiffs pray for a judgment of this Honourable Court declaring that: (a) The document of the 2nd November, 1957 which purports to show the marriage of Augustin Choppy with the first Defendant, Mrs. Mericia Angela Bibi, be declared null and void to all intents and purposes. (b) That the registering of the document of the 2nd November, 1957 (the purported act of marriage) in the special register kept to that effect be struck out, along with any marginal entry which might have been made by the Civil Status Officer in that special register. (c) That the purported legitimation of the said Auguste Bibi, Harry Bibi, Mad. Doly Bibi, the wife of Wesley Payet, Luce Bibi, the wife of Benjamin Payet, Noe Bibi, Andrea Bibi, Mary Bibi, Robert Bibi, Benjamin Bibi and Michel Bibi be declared invalid in Law. (d) That should there be any entry made by the Civil Status Officer in the act of birth of Harry Bibi, Noe Bibi, Mad. Doly Bibi, Luce Bibi, Auguste Bibi, Andrea Bibi, Mary Bibi, Benjamin Bibi, Robert Bibi and Michel Bibi, making them or pretending to show that they have become legitimated in consequence of the alleged marriage in "Articulo Mortis" of Augustin Choppy with the first Defendant, Mrs. Mericia

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Amended Statement of Claim 9th April 1958 (Registered 23rd July 1959) continued

Angela Bibi, be erased from their respective Acts of Birth. The whole with costs. Dated this 9th April, 1958. PLAINTIFFS (sd) G. Loizeau, Plaintiffs' Attorney. Documents relied upon: 1. Certified copy of the document of the 2nd November, 1957, (purported Act of marriage). 2. Title deeds showing that Augustin Choppy along with the Plaintiffs were owners in full ownership of the immoveable properties described under paragraph 3 of the Statement of Claim. 3. Act of death of Augustin Choppy. 4. Act of birth of Augustin Choppy. 5. Act of birth of Antoine Choppy. 6. Act of birth of Louise Choppy. 7. Act of birth of Mrs.Mericia Angela Bibi. 8. Act of birth of Auguste Bibi. 9. Act of birth of Harry Bibi. 10. Act of birth of Noe Bibi. 11. Act of birth of Mad. Doly Bibi. 12. Act of birth of Luce Bibi. 13. Act of birth of Andrea Bibi. 14. Act of birth of Mary Bibi. 15. Act of birth of Benjamin Bibi. 16. Act of birth of Robert Bibi. 17. Act of birth of Michel Bibi. 18. Certified copy of the register in which the purported marriage of the 2nd November, 1957 has been registered. Oral evidence. Plaintiffs. (sd) James E. Thomas. (sd) G. Loizeau, Plaintiffs' Attorney.

No.27

DEFENDANTS' NOTICE OF MOTION

No.27

Defendants' Notice of Motion 27th July 1959

IN THE SUPREME COURT OF SEYCHELLES. In Re. Antoine Choppy & Or. Plaintiffs versus Angela Mericia Choppy & Ors. Defendants C.S. 30/58. 2nd motion. To the Plaintiffs. TAKE NOTICE that this Honourable Court will be moved on the 10th August 1959 or as soon thereafter as Counsel can be heard for an order that the proceedings in the above suit before Mr. Justice Rassool be taken off the record and the case be started afresh before His Lordship, Mr. Justice Taylor on the grounds set out in the affidavit copy of which is annexed. Dated at Victoria, Mahe, this 27th day of July 1959. (sd) R. Valabhji, Defendants' Attorney.

IN THE SUPREME COURT OF SEYCHELLES. In Re:

In the Supreme Court of Seychelles

No.27

Defendants' Notice of Motion 27th July 1959 continued

Antoine Choppy & Or. versus Angela Mericia Choppy & Ors. 2nd Motion. MOTION PAPER. Counsel is instructed to move this Honourable Court for an order removing the proceedings conducted before Mr. Justice Rassool in the above case on the following grounds: 1. That certain points in limine litis pleaded in the defence were argued before Mr. Justice Rassool on the 7th, 12th, 19th and 22nd August 1958. 2. Before Mr. Rassool gave his ruling there was a sitting in Chambers as hereunder :- "Court: 'The ruling on the pleas in limine raised by the defendants was to be given by me. In view of the limited time left until my departure on 16th December and in view of the numerous part heard cases and those awaiting judgment which I must finish before my departure I find there is no point in my giving a ruling on points raised because I to rule that the case should proceed I will have no time to hear the evidence on the merits and give judgment and the trial Judge may not agree with the ruling given." 3.That subsequent to that sitting Mr. Rassool gave his ruling only on the 11th of November 1958 a few days before his departure from the Colony. 4. That the argument before Mr. Justice Rassool was conducted, on the point of nullity, mainly on law which has been definitely repealed and is no more in force, that is to say on articles 180 to 193 of the Code Napoleon. 5. That this was done in error, and all three counsel and Mr.Justice Rassool participated in that regrettable error. 6. That also a new Bench is now sitting. 7. That in these circumstances it is necessary that the points should be re-argued before the new Bench. Dated at Victoria, this 27th day of July 1959. (sd) R. Valabhji, of Counsel for defendants.

No.28

Affidavit in support of No.27 16th July 1959

No.28

AFFIDAVIT IN SUPPORT OF NO.27

2nd Motion. - IN THE SUPREME COURT OF SEYCHELLES - Re Antoine Choppy & Or. Plaintiff versus Angela Mericia Choppy & Ors. Defendants. AFFIDAVIT. I, Angela Mericia Choppy, widow of Augustin Choppy, make oath and say as

follows: 1 That I am the principal defendant in the above case in which the plaintiffs seek to obtain from this Honourable Court a decree of nullity of my marriage with Augustin Choppy. 2. That the plaintiffs are the brother and sister of my deceased husband. 3. That in my defence in the above case I raised certain points in limine litis. 4. That these points were argued before Mr. Justice Rassool on the 7th, 12th, 19th and 22nd August 1958. 5. That before Mr. Rassool gave his ruling there was a sitting in Chambers which I set out as follows: "Court: 'The ruling on the pleas in limine raised by the defendants was to be given by me. In view of the limited time left until my departure on 16th December and in view of the numerous part heard cases and those awaiting judgment which I must finish before my departure I find there is no point in my giving a ruling on points raised because were I to rule that the case should proceed I will have no time to hear the evidence on the merits and give judgment and the Trial Judge may not agree with the ruling given." 6. That subsequent to that sitting Mr. Rassool gave his ruling only on the 11th of November 1958 a few days before his departure from the Colony. 7. That I am advised that the argument before Mr. Justice Rassool was conducted, on the point of nullity, mainly on law which has been definitely repealed and is no more in force, that is to say on articles 180 to 193 of the Code Napoleon. 8. That I am advised that this was done in error, and that all three counsel and Mr.Justice Rassool participated in that regrettable error. 9. That also a new Bench is now sitting. 10. That in these circumstances it is necessary that the points should be re-argued before the new Bench. Sworn by the above named deponent at the Registry Court House, this 16th day of July 1959. Before me, (sd) D. Ah-Lock, Ag. Registrar, Supreme Court. (sd) Mme. Vve. Augustin Choppy, Deponent.

In the Supreme Court of Seychelles

No.29

Defendants' Notice of Motion 24th July 1959

No.29

DEFENDANTS' NOTICE OF MOTION

3rd Motion. IN THE SUPREME COURT OF SEYCHELLES - In Re: Choppy and anor. v/s Choppy and ors. C/S 30/58. Notice of Motion. To the Plaintiffs in the office of their attorney G. Loizeau Esq. or J.E. Thomas Esq. TAKE NOTICE that this Honourable Court will be moved on the 10th of August 1959 or so soon after as counsel can be heard for an order giving leave to alter the statement of defence on the grounds set out in the affidavit of which copy is annexed. Proposed amended defence also attached. Dated 24th July, 1959 (Sd) M.C. Collet, Attorney for the defendants.

No.30

Defendants' Notice of Motion 24th July 1959

No.30

DEFENDANTS NOTICE OF MOTION

3rd Motion - IN THE SUPREME COURT OF SEYCHELLES - In Re: Choppy and anor v/s Choppy and Ors. C/S 30/58 MOTION PAPER Motion only if motion 1 is dismissed. Counsel is instructed to move this Honourable Court on the 10th of August 1959 or so soon after as counsel can be heard, for leave to alter and amend the statement of defence, in reply to the amended statement of claim, on the ground that the real questions in controversy between the parties should be more clearly set out for the Court to determine the same, and further grounds as set out in the affidavit annexed. Proposed defence also annexed. 24th July, 1959
(sd) M.C. Collet of Counsel for the defendants.

No.31

AFFIDAVIT IN SUPPORT OF NO.30

In the Supreme Court of Seychelles

No.31

Affidavit in support of No.30
27th July 1959

3rd Motion - IN THE SUPREME COURT OF SEYCHELLES C/S 30/58. In Re: Choppy and anor. v. Choppy and Ors. Affidavit in Support of Motion - I, HARRY CHOPPY, a defendant in the above case acting on behalf of all the other defendants, MAKE OATH and say as follows:- 1. That a redrawn statement of claim has been delivered to my attorneys on the 23rd of July, 1959, pursuant to the order of the Court of the 10th of July. 2. That it is necessary, if the motion to strike out the statement of claim fails, that the statement of defence be amended so that the issues to be tried to be set out more clearly and more completely before this Honourable Court so that the real questions in controversy be determined by the Court. 3. That the proposed altered and amended statement of defence sets out more completely and more clearly the real questions in controversy between the parties. (sd) Harry Choppy, Deponent. SWORN by the above named deponent this 27th day of July, 1959. BEFORE ME: - (SD) D. Ah-Lock, Ag. Registrar of the Supreme Court.

In the Supreme Court of Seychelles

No.32

Amended and altered Defence 28th July 1959

No.32

AMENDED AND ALTERED DEFENCE

Proposed amended and altered defence. In the Supreme Court of Seychelles. Choppy and anor. v/s Mericia Angela Choppy and Ors. 1. The plaintiffs in their statement of claim set out indirectly to ask this Honourable Court to declare the marriage of the late Augustin Choppy and Mericia Angela Choppy nee Bibi, null and void. The plaintiffs have no locus standi in law to apply for such nullity. 2. The plaintiffs have brought forward no ground of nullity which are sufficient at law. 3. Defendants aver that the document executed by Father Maurice, (a) was and is an act of marriage in articulo mortis (b) is valid (c) witnesses a valid marriage. 4. Defendants deny that the words "intimate relations" and the words "who had been his concubine and remained his concubine until his death" occur. The Act of marriage in articulo mortis speaks for itself. 5. Paragraph 6 is admitted. 6. Paragraph 7 is admitted. 8. The alleged document is a valid Act of Marriage, witnessing a valid marriage, with all the legal effects of such an act "in articulo mortis". 9. In reply to paragraph 9, defendants aver again that the alleged document is a valid act of marriage in articulo mortis witnessing a valid marriage with all the legal effects thereof, and defendants deny the allegations set out in the said paragraph under clauses (a), (b), (c), (d). The defendants aver (a) That the conditions for a marriage in articulo mortis did exist. (b) That all the requirements of the civil status Ordinance were complied with (c) That the said Augustin Choppy before and at the time of the marriage was not subject to any mental infirmity and that he fully knew the nature and quality of his acceptance of the fact of marriage. 10. Defendants further aver that even were the marriage to be declared null and void and the act of marriage cancelled, the children of the

marriage, that is to say defendants Nos.2 to 9 (sic) inclusive, would still, in law, remain the legitimate children of the deceased Augustin Choppy, the said marriage having been contracted in good faith by the first defendant.
Wherefore the defendants pray that this Honourable Court should dismiss the plaintiffs' claim with costs. Dated this 28th of July, 1959.
(sd) M.C.Collet, Attorney for the Defendants.

In the Supreme Court of Seychelles

No.32

Amended and altered Defence 28th July 1959 continued

No.33

REGISTRAR'S NOTES

No.33

Registrar's Notes 10th August 1959

Sitting of Monday 10th August 1959 before His Lordship E.N.Taylor, Judge ad hoc, assisted by the undersigned Registrar. Messrs.Loizeau & Thomas for Plaintiffs. Mrs.Collet & Mr.Valabhji for Defendants. Mrs.Collet. There are 3 motions before the Court. Motion papers are before Court. (Reads first motion). (Read 1st & 2nd paras. of title of statement of claim). Pls. are therefore attacking right at the beginning the status of Angela Bibi as widow of the de cujus. (Reads para. 9 of S. of C.) - Refers to prayers at para.10 (a) & (b). This is really an application to declare the marriage null and void. Submits that nullity of marriage is governed by the Matrimonial Causes Ordinance Vol. II Laws of Seychelles - Cap. 91. This Ordinance repeals the provision of the French Civil Code re-nullity - Articles 183 to 193 inclusive. Ord. sets out the grounds of nullity in Sec. 14 of the Ordinance. Jurisdiction is given to the Court by Sec. 5 (a) & (b) of the same Ordinance. The manner of

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Registrar's Notes 10th August 1959 continued

exercising the Jurisdiction is set out in Sect. 6 and Sect.41 of the same Ordinance. Submit that where jurisdiction is given and the rules to exercise the jurisdiction are given at the same time the Court must follow the procedure as laid down. Cites Maxwell 9th Edition - On Interpretation of Statute - pages 377 & 378. Craies on Statute Law Pages 256 - 257. Taylor versus Taylor 1876 Vol. 1, Ch. pages 426 - 431. The rules are made by proclamation. The proclamation itself "shall be followed". Matrimonial Cause is described in Section 3 of the Ordinance. Refers to Rule 2 (1) of the Matrimonial Causes Rules - Every action to be started by petition. What petition shall contain is set out in Rule 2 (1) paragraphs a, b, c, d, i, f, k, l. Refers to Rule 2 (8) of Matrimonial Causes Rules. Refers to Section 18 of the Ordinance. Submit none of the requirements were complied with and none of the rules were followed. An application for cancellation of a deed or an "acte de mariage" is in reality an application to declare the marriage null. Refers to M.L.R. 1949 pages 183-190 Ex parte: Wong Fum Tai. Submits if the act of marriage can be cancelled without declaring the marriage null, we shall be in the absurd position of having a cancelled "act of marriage" with the marriage itself still standing. If the nullity of the deed entails the nullity of the marriage then the nullity of the marriage would have been declared without the imperative provision of the Matrimonial Causes rules being followed - without a decree nisi and without a decree absolute. The Plaintiffs will rely on Mauritius Law as regards nullity as throughout all proceedings before Mr. Rassool they relied on Arts. 180 to 193. By the Matrimonial Causes Ordinance these articles have been repealed. The Ordinance deals with the substance and not only with procedure. No such Ordinance in Mauritius. Consent does not give jurisdiction. Cites Maxwell on Interpretation of Statute - 9th Edition. The interlocutory proceedings show what the plaintiffs really sue for is a decree of nullity. Submits that the claim for nullity must be asked according to the proper rules. Refers to M.L.R. 1949 pages 183-190. Ex Parte: Wong Fum Tai. An application to annul an act is the same thing as to declare a marriage null

and void. Submits that the claim of legitimation to be annulled cannot be tried with the claim for nullity of marriage. I move that the S. of C. and proceedings to this day be set aside as the Court has no jurisdiction to entertain the claim except by petition under the Matrimonial Causes Ordinance. Mr.Thomas: Case of marriage in articulo mortis which is unknown to English law. In law which we submit applies here anybody who has an "interet ne" can apply for cancellation of marriage. Case of marriage in articulo mortis is unknown to English Law, and as there is nothing like this in English Law, the completely English Rules of the Matrimonial Causes Ordinance has no provision for marriage in articulo mortis. As no rules made under this Ordinance for marriage in articulo mortis, we must go back to the Civil Status Ordinance which deals with this. Cites Seychelles Laws Vol. I Cap. 26 at page 159 Sec. 78 - Express provision for marriage in Articulo mortis - Sections 78 and 79 cites procedure which is completely outside the rules of marriage - Medical practitioner or four witnesses. Civil Status Ordinance still stands and is the only authority for marriage in articulo mortis. Refers to Sec. 111 of Civil Status Ordinance. Penal Offence to celebrate a marriage improperly. Refers to Sec.103 of Civil Status Ordinance. Submits "Ex facie" act of marriage should not have been registered - important signature missing from it. As we have no procedure in English Law to provide for marriage in articulo mortis we had to look elsewhere for the origin. Submit the origin is the French system of marriage in extremis. Cites Dalloz Jurisprudence Generale 1872 Part II page 109. If submission is correct then French Law applies and the Matrimonial Causes Ordinance cannot apply. Under French Law collaterals can attack marriage on 2 grounds only. Under the Capitulations certain guarantees were given to the Colony. The British Government agreed to respect the religion, laws and customs of the Seychelles and this was re-incorporated again in the Treaty of Paris. Under the Treaty of Paris the Law of this Colony remains to be French law as existing at the time of the Treaty of Paris. Subsequent French amendments do not and could not apply. Where the Code Civile has not been

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Registrar's Notes 10th August 1959 continued

amended the French Law must apply. In case of marriage in articulo mortis the French Law must apply. The Law of Marriage which we have now (Matrimonial Causes Ordinance) does not mention marriage in articulo mortis. Marriage in articulo mortis is a marriage in name only. A marriage under ordinary law must be consummated before it is fulfilled. The object of marriage in articulo mortis is not to make a marriage in case the man is going to recover, it is just opposite - although in certain cases the man might recover. If the man does recover the marriage would be valid and could only be dissolved at the instance of parties under the Matrimonial Causes Ordinance. The purposes of a marriage in articulo mortis is nothing like a marriage in the ordinary sense and that is why the legislator left it out of the Matrimonial Causes Ordinance. Submits that unless there is local legislation to the contrary the article of the French Code must apply because of the Capitulations and the Treaty of Paris. The marriage in articulo mortis is dissolved by non compliance with the provisions of the Civil Status Ordinance. Submits marriage "in articulo mortis" is the same as "marriage in extremis". The only Ordinance governing marriage in articulo mortis is the Civil Status Ordinance Sections 78, 79 and 80. The only way an act of Civil Status can be defeated is under the provisions of the Civil Status Ordinance - Section 103 of Civil Status Ordinance. In a marriage in extremis, the collaterals can attack the marriage. Cites Code Decaen - Part 2 page 3 under heading "Capitulations". Article 8. Authority for saying that unless there is a local legislation we are bound by the French Law existing as at the time of the Capitulations and Treaty of Paris. Cites M.L.R. 1932 at page 206 Osman Yearoo & Ors. versus The Colonial Government. Seychelles part of Mauritius until 1903. Code Civile very little amended since 1810 and commentators distinguish amendments and even a modern text can be used. Court. Case is adjourned 11th August, 1959, at 2 p.m. for continuation. (sd) D. Ah Lock, Ag. Registrar.

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No.33

Registrar's Notes
11th August 1959

Sitting of Tuesday 11th August, 1959, before His Lordship E.N. Taylor, Judge ad hoc, assisted by the undersigned Registrar. Messrs. Loizeau & Thomas for Plaintiffs. Mrs. Collet and Mr. Valabhji for Defendants. Mr. Thomas continues his arguments. Commentators not binding on the Court - Neither are the decisions of the French Court. Some importance can however be attached to decisions of the "Cour de Cassation". Case in Mauritius on question of motor car injury. 2. things pleaded, "Faute" pleaded. The Court of Mauritius refused to follow the decisions of the "Cour de Cassation". Present case not a simple case for nullity of marriage. It also asks that the legitimation of the children is not in accordance with the Law - One of the reasons. The plaint not made by petition under Matrimonial Causes Ordinance. All these points were argued by Mr. Valabhji, who at that time appeared for all the Defendants, before Mr. Justice Rassool. Refers to record Sitting in Chambers of 7th October 1958. Same points being raised now. Mr. Valabhji now asking for the proceedings before Mr. Rassool to be struck out. It was agreed before Mr. Justice Rassool that Mr. Rassool should give a ruling on the points "in limine" although Mr. Rassool said he might not be able to finish the case. The ruling of Mr. Rassool could always be taken on appeal at the end of the case. After we had been informed by Mr. Rassool that he would not be able to hear the case on the merits, we agreed that he should give a ruling which he did on 11.11.58. When a ruling is given it does not mean that the party against whom the ruling is given has no remedy. The party can appeal to Mauritius. The defendants are asking you in their motion to reverse the judgment of this Court and declare it null and void. Agreement on ruling borne out by letter from Mr.Valabhji dated 23 October and letter from Loizeau and myself dated 24th October. Cites Glasson Pratique de Procedure Civile. Vol. I at page 896. Mr. Valabhji said he would not contest the ruling. Submits that the clients of Mr. Valabhji are bound by the decision of Mr. Valabhji. Present motion of Valabhji is a waste of Court's time. Mrs. Collet is bound by the aveu of Mr.Valabhji.

In the Supreme Court of Seychelles

No.33

Registrar's Notes 11th August 1959 continued

It is not the lawyer who is bound but the clients. Refers to ruling of 11th November given by Mr. Rassool. S.23 in the ruling appears to be a misprint. Mr. Justice Rassool has obviously dealt with the question of procedure by plaint in his ruling. Mrs. Collet cannot be allowed to controvert the aveu made by Mr. Valabhji. As first motion of Mrs. Collet deals only with the point of Procedure Mrs. Collet cannot make the motion now. Cites Chenard & Co. v. Arissol 1949 Appeal Cases at page 127. Submit first motion should be rejected. Defendants have their relief. They can appeal to the Court of Mauritius. Mrs. Collet: Cites Maxwell - page 392. Consent does not give jurisdiction. First motion is about the jurisdiction of the Court and not on the points taken in limine. Matrimonial Causes Ordinance hardly mentioned before Mr. Justice Rassool. Only record of mention of this Ordinance is at page 12 of typescript record. Local Ordinance largely procedural. Capitulation and Treaty of Paris. Nothing in the Code Civile about marriage in articulo mortis. Nothing in the French Code about "marriage in extremis" or "in articulo mortis". For our purpose we treat marriage in "articulo mortis" as originating in Seychelles and/or Mauritius. Origin of marriage "in articulo mortis" not French. Refers to certain articles of the Civil Code repealed by the Civil Status Ordinance. Capitulations could not preserve in the Code something which does not exist. The Civil Status Ordinance did not repeal Arts. 180-193 of the French Code. These articles were repealed by the posterior Matrimonial Causes Ordinance which now govern all Matrimonial matters. Civil Status Ordinance is the law of Seychelles and the French Law it repeals is not law here. Part IV of Ordinance Sections 78, 79 and 80 deals with marriage and marriage in articulo mortis. Marriage in "articulo mortis" not referred under another section. Section 78 does not say that if the party recovers the marriage is void. Refers to M.L.R. 1949 page 187. Refers to Craies on Statute Law at pages 235, 236. Refers to Matrimonial Causes Ordinance which deals with all kinds of marriages. Jurisdiction is given to Court only in Sections 5 and 6 of Matrimonial

Causes Ordinance. As under Section 78 of the Civil Status Ordinance marriage in articulo mortis is a valid marriage, Section 6 of Matrimonial Causes Ordinance applies. Section 14 of Matrimonial Causes Ordinance lays down the ground for nullity. Plaintiffs have relied on grounds 2, 7, 9 of Section 14 of the Ordinance. In Proceedings Plaintiffs have referred extensively to Arts.180-193 of the Code Civil. Cap. 91 Seychelles Laws have repealed these articles and they have not been re-enacted. Plaintiffs must come to Cap.91 for nullity of the marriage in articulo mortis. Only ground mentioned in Civil Status Ordinance is about consent. The ground of consent arises in Section 14 of the Matrimonial Causes Ordinance. The Civil Status Ordinance does not set out the causes of nullity and any causes must be read together with Section 14 of the Matrimonial Causes Ordinance. Cap.91 was enacted with Royal Consent, was assented to in England. It has the force not only of an Ordinance but of an Order in Council. Jurisdiction for nullity is only described under Cap.91 and nowhere else. Court. The motion fails and is dismissed with costs. Reasons to be given later. Mrs.Collet. I have been instructed to apply for leave to appeal against the ruling. Court. Leave to appeal refused. SECOND MOTION: Mr. Valabhji: Second motion is for an order to remove proceedings conducted before Mr.Rassool from the record. Refers to section 152 of the Seychelles Code of Civil procedure. In this case only way to amend is to set aside Mr. Rassool's ruling. Court. The motion is dismissed with costs. THIRD MOTION: Mrs. Collet: moves for the amendment of the Defence as prayed for in the motion. At this stage the proceeding is adjourned into Chambers as it is a question of amendment of pleadings. In Chambers Present: Mr. Thomas and Mr.Loizeau for Plaintiffs. Mrs. Collet and Mr.Valabhji for Defendants. Following certain remarks made by Court, Mr.Thomas agrees to recast the Statement of Claim, to file one copy of the recast plaint with the Registrar and serve a copy on Mrs.Collet, Court informs Mrs.Collet that she is at liberty to recast her defence in the light of the recast plaint. If she does so it might not be necessary for her to proceed with

In the Supreme Court of Seychelles

No.33

Registrar's Notes 11th August 1959 continued

her third motion. Third motion is adjourned to a date to be fixed by the Registrar. Mrs. Collet wishes it to be recorded that neither Mr. Valabhji nor herself agree or consent to anything. (sd) D. Ah-Lock, Ag. Registrar.

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12th October 1959

Sitting of Monday 12th October, 1959 before His Lordship E.N. Taylor Judge ad hoc assisted by the undersigned Registrar, Mr. Thomas and Mr. Loizeau for Plaintiffs. Mrs. Collet for defendants. Mr. Thomas. Motion to ask Court that service of amended plaint served on Mrs. Collet by Usher Bossy and refused by her and service to Mrs.Collet by Mr. Thomas of the amended plaint and refused by her be declared by the Court to be valid service. In support I have filed an affidavit signed by me. There is also the Usher's return of non-service. Submits service by a Court Usher cannot be refused by anybody. Service by Usher and myself was made as a result of an order made by Court at the last hearing of the Court in August 1959. Court instructions were carried out by me. I formally served a copy of the amended plaint through the Usher although in Court's order it was stated that I should simply hand over the amended plaint to Mrs. Collet. It would appear that the main objection of Mrs.Collet is that as the matter involved 'ordre public' it should be served on the parties. Service on the parties would involve considerable expenses. In any case service on the parties would be useless as the defendants would still have to bring the papers to Mrs.Collet. Argument made by Mrs.Collet in reply would apply equally if service was made on the defendants themselves. Para.1 of reply makes no sense. As regards para.2 of reply it is not true that the amended plaint is a new plaint altogether. Very anxious to proceed with the case on the merits. Point was taken about distinction between nullity of "Act of Marriage" and "nullity of marriage". As regards paragraph 4 of reply. That point

should have been taken before Court made the order that the amended plaint be served on Mrs. Collet. One does not make an aveu by accepting service. Until one receives a document one cannot know what is in it. If Mrs.Collet refused service how could she know that the defendants were called 'Bibi' in the plaint. Reasons given in the reply are 'ex post facto'. Cites Beaudry Lacantinerie 2nd Edition Vol. II Traite de Droit Civil de personnes - page 627 - Des effets generaux du mariage. Page 627 para. 2114. No obligation on the wife to take the name of the husband. Operative name is father's name. Submit that because of that no admission is made by the Defendants. This refusal to carry out Court's order is a serious one. It can be contested in Court but not before an Usher. It has no merits and it is a waste of time as well as an attempt to make plaintiffs spend further money. Request Court to grant prayer made in my motion. Mrs.Collet. The grounds on which I contest this application is before the Court. I did not take the proceedings of the 11th August to be in any way an order of the Court. In this case there are many defendants, several of whom are minors. I cannot take upon myself to agree or consent to anything. Matter is of "ordre public" affecting marriage and legitimacy of children and should have been served on Defendants. I say my clients are entitled to the name of "Choppy". No authorities for refusal to accept service. Court. The motion succeeds with costs. Mr. Thomas May a date be fixed for hearing the case on the merits? I believe that the amended defence has not been filed and it will also be necessary to fix a date for the defence. Court. The 14 days time for defence has elapsed. If Mrs.Collet had accepted service when she was served by the Usher she would have had ample time to file an amended defence. Court to Mr. Thomas: Does the recast plaint differ in any respect from the original plaint. Mr. Thomas: No, except for a few minor points. Court. If the recast plaint had differed materially from the original plaint I would have granted time for defence on that ground alone. As however the recast plaint differs from the original in a few minor points only I will be prepared to allow amendments to the defence

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No.33

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during the course of hearing the case on the merits, if found necessary. A date will now be fixed for hearing the case on the merits. Court orders: (1) That the amended plaint be deemed to have been served effectively on the Defendants through their Attorney on the record by the Usher on the 22nd September 1959. (2) That the Defendants pay the taxed cost of this motion and that in default of payment within 14 days the Plaintiff be at liberty to apply as against the Defendants' Attorney expressly. Case is adjourned to Tuesday 3rd November at 2 p.m. and following afternoon for hearing. (sd) D. Ah Lock, Ag. Registrar.

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3rd November 1959

Sitting of Tuesday 3rd November 1959 before His Lordship E.N. Taylor, Judge ad hoc, assisted by the undersigned Registrar. Mr.Thomas & Mr. Loizeau for Plaintiffs. Mrs.Collet and Mr. Valabhji for defendants leave default. Defendants leave default. Mr.Thomas refers to S. 69, 70 and 72 of Seychelles Code of C.P. S 70 is the operative one in this case. Recast plaint filed under directions of the Court. Submit the document purporting to record the marriage is an invalid instrument. Document brought before Court at an earlier stage of action. Submit document is in evidence now, Refer to S.7 of Evidence Act. Cap. 81 Vol. II, Laws of Seychelles. Plaint sets out facts relating to the action brought by plaintiffs against Defendants. Quite a lot of the Plaint have been admitted or not properly denied. Augustin Choppy was about 71 years old when he died. Apart from the Bibis his only heirs were his brother and sister - Antoine and Louise Choppy. If there had not been this purported marriage Antoine and Louise Choppy would have been the only heirs to the properties mentioned in the Schedule to the Plaint. Although Augustin Choppy was old, yet until about April 1956 he was in reasonable command of his faculties. In April 1956 Augustin went to Marianne Island and there he fell seriously ill. He had to be brought back to La Digue when he was in a more or less prostrate condition which hardly varied, until he died. We say that from April 1956, his mind was seriously deteriorating all the time. He was treated by Dr. Francis in La

Digue and in July 1956 he was taken to Mahe where he stayed until 6th November 1957. He was then taken to La Digue where he died 12 days after his arrival. Important to note that after he was brought over to Mahe, he made a Will on the 2nd November 1956. In this Will the Plaintiffs were given a considerable amount of his property. Defendants were also given something. In February 1957 he made another Will, where he leaves considerably more to the present Defendants. Another Will was made on 10.5.57 when he more or less cuts out his brother and sister to the benefit of Defendants. During this time Plaintiffs had almost no access to the deceased. I am not relying on undue influence, I am relying on fact that the deceased was not in full possession of his faculties when the alleged marriage took place. After Augustin Choppy came back from Marianne he was unable to recognise his own relatives and people who had been working for him for over 20 years. Will produce evidence that just before the alleged marriage Augustin Choppy was not in full possession of his faculties. Marriage in articulo mortis governed by S.78-80 of the Civil Status Ordinance. Marriage in articulo mortis very carefully controlled. If a man is in extremis he might do some silly things and that is why the very severe control. Refers to S. 79 of Civil Status Ordinance. Mrs. Collie had attended Augustin Choppy up to the 4th November, 1957 and she was not called. 3 of the 4 witnesses were legitimated by the purported act of marriage. It is significant the doctor was not called. The 3 witnesses gave different names. In Civil Status Ordinance there are forms for marriage. Form 4 is for marriage 'in articulo mortis'. Form 3 is the ordinary form. Form 3 must be signed by the Civil Status Officer. On Form 4 the Priest solemnising the marriage must sign the document. In the present case it would appear the priest has not signed the Certificate. Submit that if Court find the witnesses were incompetent or that the priest did not sign the Certificate, that is an end of the case. Court: Case is adjourned to the 4th November 1959 at 2 p.m. for continuation.
(sd) D. Ah-Lock, Ag. Registrar.

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In the Supreme Court of Seychelles

No.34

Letter, Defendants' Counsel to Registrar, Supreme Court 3rd November 1959

No.34
LETTER, DEFENDANTS' COUNSEL TO REGISTRAR, SUPREME COURT.

3rd November 1959. Dear Mr. Registrar, will you please inform the Judge, Mr. E.N. Taylor, as a matter of courtesy from us that the defendants in the case of Choppy versus Choppy C.S. 30/58 this afternoon, intend to leave default under section 138 of the Seychelles Code of Civil Procedure. Yours faithfully, (sd) M.C. Collet, (sd) R. Valabhji. The Registrar, Supreme Court.

No.35

Registrar's Notes 4th November 1959

No.35
REGISTRAR'S NOTES

Sitting of Wednesday 4th November, 1959, before His Lordship E.N. Taylor, Judge ad hoc, assisted by the undersigned Registrar. Mr. Thomas and Mr. Loizeau for Plaintiffs. Mrs. Collet and Mr. Valabhji for Defendants leave default. Defendants leave default. Mr. Thomas. A letter was sent to the Registrar by the advocates of Defendants saying that they were leaving default under S. 138 of the C.P.C. Submit Sec. 138 does not apply in these circumstances. S. 138 is dependant on S.137. Clear that the defendants cannot make default under S.138. I put in a praecipe to the Registrar of Deeds. I have a witness who signed the Marriage Certificate waiting and I should like the Registrar of Deeds to produce the Original certificate so that the witness can identify it. In para.4 of defence it is not denied that Father Maurice executed a document but it is asserted that Augustin Choppy was lawfully married. Necessary to have the original act of marriage in evidence.

Plaintiffs' Evidence

PLAINTIFFS' EVIDENCE

No.36

Antoine Choppy 4th November 1959 Examination

No.36
ANTOINE CHOPPY

Mr. Thomas calls: Antoine Choppy (Sworn).

I live at La Digue Island. I am a proprietor. I am 67 years old. Augustin Choppy was my brother. I remember when my brother died. He died on 18th November 1957. He died at La

No.36
Antoine Choppy
4th November 1959
Examination continued

Digue Island. He came to Mahe for the last time on the 6th July 1956. I remember the date quite well. I have always had the date in my mind because we had a suit filed and pending and the date was material. My brother came to Mahe against his will. He was compelled to come. The Bibi family compelled him to come over to Mahe. (At this stage Mr. Maurice Confait, an officer of the Civil Status is called).

No.37
MAURICE CONFAIT

No.37
Maurice Confait
4th November 1959
Examination

Maurice Confait (Sworn). I am an officer of the Civil Status, Victoria. The Register which I produce is the Register of Marriage in Articulo Mortis. It is a separate Register from the ordinary Marriage Register. Marriages in Articulo Mortis are quite rare - two or three a year. Sometimes there are none during a year. According to the law the priest who performs the marriage in Articulo Mortis must forward it to the Registry within 3 days of the performance of the marriage. The purported marriage of Augustin Choppy is numbered 2 in the Register. The date of the marriage is given as 2.11.57. I do not know from the document when it was sent to the Registry Office. No Register is kept to show on what date the document is received in the Registry Office. If the marriage in articulo mortis took place in the Victoria District the certificate should have been sent to the Civil Status Office at Victoria. The Chief Civil Status Officer is stationed in Victoria. His office is the same as mine. I do not know if the Certificate was sent direct to the Chief Civil Status Officer. I do not remember if I was present when the Certificate was forwarded to the Office. I do not know if there is any machinery to verify whether the certificate is sent within 3 days to the office. I do not know if the certificate has to be forwarded by the priest to the Office within 3 days of the performance of the marriage. I do not know if a copy was forwarded to the Attorney General. I do not know if a copy of the Certificate has to be forwarded to the Attorney General. I have known for a long time that the law requires it but there are no standing arrangements. There is no

In the Supreme Court of Seychelles

Plaintiffs' Evidence

No.37

Maurice Confait
4th November 1959
Examination continued

record book apart from the file of the documents themselves. I cannot say if it is usual for the priest to sign the marriage certificate in articulo mortis. I agree this certificate dated September 1959 is signed by the priest. I think the certificate was not sent to the Attorney General at all. I did not know that in the margin of the transcription register the Civil Status Officer had to certify that one of the parties was in articulo mortis. I did not know that was necessary. I did not know Augustin Choppy. The document handed to me by Mr. Thomas was prepared in my office. It is a copy of this original (Witness takes the copy away to recheck all the details.)

No.38

Antoine Choppy (Recalled)
4th November 1959
Examination

No.38
ANTOINE CHOPPY (Recalled)

Antoine Choppy (resumes examination). Apart from the Bibis Dr. d'Offay came to fetch Augustin Choppy at La Digue. Dr. d'Offay was accompanied by Dr. Fallon. I know Augustin did not want to go to Mahe because he told me so personally. I asked my late brother where he was going and he told me he was going to Mahe but against his will. Before Augustin Choppy left La Digue he was rather normal. That was in 1955. Augustin Choppy stopped being normal when he was brought over to Mahe. Before he came to Mahe in 1956 he was mentally fit. Augustin Choppy became mentally deficient before he left La Digue. It began about 1955. Before he came to Mahe, he lived in a house very close to the house where my sister and myself lived. The houses were about 100 feet apart. It was about a year before he came to Mahe that Augustin Choppy fell ill at Marianne. That was mid 1955. After he fell ill he was taken to La Digue. Augustin Choppy lived quite near to us and I used to visit him twice a day. Everytime I greeted him and asked him how he was getting he always answered "I am leaving you". Sometimes he did not even recognise me. One day I went to see him and he asked me who I was. Though I was his brother he did not recognise me. One day when the pirogue from Marianne was in, I told him so but he told me, "No, the pirogue comes from Anse Coco". I

tried to correct him but he insisted. My brother knew there were 4 pirogues at Marianne. At the time of the incident related above he knew there were 4 pirogues at Marianne. When I insisted the pirogue came from Marianne he told me there were no pirogues at Marianne. At that time, there were 4 pirogues at Marianne. Sometime I told him somebody sent him his compliments and he answered "why, what for, I don't know him, I don't want the compliments". My brother at times did not realise I was visiting him twice daily. In the afternoons he could not remember whether I visited him in the morning. (At this stage Mr. M. Confait an officer of the Civil Status is called).

No.39

MAURICE CONFAIT (Recalled)

Maurice Confait. This document is a true copy of the original of the marriage in articulo mortis between Augustin Choppy and Mericia Bibi. It has been certified by me.

No.40

ANTOINE CHOPPY (Recalled)

Antoine Choppy (Examination continues). My brother complained about his head almost every morning. On many occasions he could not remember in the afternoon whether he had suffered from his head in the morning. He always put his hands just above his forehead. In the house where my brother lived there was nobody else. Mr.Payet was my brother's manager and he looked after him and his affairs. My sister and myself cooked his food. We took his food to his house. He was bed ridden and when he had to take his food we had to lift him to an armchair. Payet and myself used to lift him up. My brother's clothes were torn, he was always half naked. More often than not his private parts were showing and he could not cover himself. My brother did not know what he did. He did not seem aware that he was naked - in any case he was helpless.

In the Supreme Court of Seychelles

Plaintiffs' Evidence

No.40

Antoine Choppy (Recalled) 4th November 1959 Examination

When Donald Payet saw him naked he used to cover him up, but he used to go from one side of the bed to another and uncovered himself. From the time my brother came to Mahe I did not see him. He went back to La Digue on the 6th November 1957. At that time I was in Mahe. It was on the 18th November that I went back to La Digue. I did not see my brother before he died. On the 6th July 1956 they carried my brother in an armchair to the boat. I did not go to the boat. I did not accompany him. My brother returned to La Digue on 6th November 1957 but I did not travel with him and I did not see him again before he died.

NO XXM.

No.41

Father James Chang Tave 4th November 1959 Examination

No.41

FATHER JAMES CHANG TAVE

Father James Chang Tave (Sworn). I am a Roman Catholic Priest. I live in Victoria. I knew the late Augustin Choppy. I have seen him. He was not one of my parishioners but when he came here one of his sons called me to the place where he was staying. It was about the end of October 1957 that his son Noe came and called me. That was not the first time I saw him. My visit was before the ceremony performed by Father Maurice. It was about 3 days before the ceremony. When I went in the house I found Choppy inert on his bed. His hands were crossed and so were his feet. I greeted him. The first time he did not answer me, the second time I greeted him he answered but his voice was not too clear. There was a lapse and I asked him if he had called for me he did not answer. I asked him whether he wanted the sacrament. He made a noise as if to signify he did not want to. Then I talked to him again and he answered with a murmur. Eventually he replied with a filthy abuse saying "Alle faire foute". Then I went and called the woman living with him and asked her to talk to him. The woman asked him "Did you not send for the priest". He then replied with a murmur and eventually said "Alle faire foutre, couyon". I then told his wife to leave him alone and that if he eventually wanted a

priest to send for me. By Court. Sometimes it does happen that elderly and sick people ask for a priest and when the priest comes they have forgotten all about it. I understood he has asked for me but when I asked him he did not answer. I asked the wife if Augustin Choppy had been in the state I saw him for long and she told me "for about 2 or 3 weeks". Then I went away. I never saw him again.

In the Supreme Court of Seychelles

Plaintiffs' Evidence

No.41

Father James Chang Tave
4th November 1959
Examination continued

NO XXM.

No.42

EVARISTE ERNESTA

No.42

Evariste Ernesta
4th November 1959
Examination

Evariste Ernesta (Sworn). I live at La Digue. I am a proprietor. I knew Augustin Choppy. I have known him all my life. I am 65 years old. I used to sell my coconuts to him. I had been selling coconuts to him for about 15 to 18 years. I saw him often. When he did business with me he was quite well. He started being queer when he fell ill at Marianne at the beginning of 1956. It was on the last occasion he went to Marianne that he fell ill. He never returned to Marianne again and he never fully recovered his faculties. I saw him often. When I took my nuts to him he always queried me and asked me who gave me permission to collect nuts on his land. When Augustin Choppy came to Mahe, I once paid him a visit and he did not recognise me. When he was still at La Digue when I put a question to him, he would answer on a different subject. He complained to me about his head. He always complained of pain in the forehead. He was always naked, his private parts were always showing and if people came to see him he did not care whether people saw him naked or not. When he returned to La Digue, I went to see him on the day he arrived i.e. on the 6th November. On that day Augustin Choppy was nearly unconscious. When I got to him he did not recognise me.

In the Supreme Court of Seychelles

Plaintiffs' Evidence

No.42

Evariste Ernesta
4th November 1959
Examination continued

NO XXM.

Court: Case is adjourned to the 5th November at 2 p.m. for continuation. (Sd) D. Ah-Lock, Ag. Registrar.

Sitting of Thursday 5th November 1959 before His Lordship E.N. Taylor, Judge ad hoc, assisted by the undersigned Registrar. Mr. Thomas and Mr. Loizeau for Plaintiffs. Mrs. Collet and Mr. Valabhji for Defendants leave default. Defendants leave default.

No.43

Karl St. Ange
5th November 1959
Examination

No.43

KARL ST. ANGE

Karl St. Ange (Sworn). I live at La Digue. I am a proprietor. I have known Augustin Choppy. I know Antoine and Louise Choppy very well. I see them in Court today. I did know Augustin Choppy in 1956. When he came from Marianne during the year 1956, he was moribund. I saw him, I was there when he disembarked from Marianne. I also saw him in his house quite often. Every time I went to see him he was on his bed and could not reason well. At times he knew me, at times not. I went to talk to him about business when he came from Marianne. I wanted to have his permission to build a Government road across his property. I went to see him in my capacity as President of the La Digue Local Board. I am still the President of the La Digue Local Board. I could not have any reply from him - negative or positive. Before 1956 he was able to discuss business with me normally. Before he left La Digue to go to Marianne he was able to discuss business normally. When I asked him about the road, he could not understand. It is my opinion that on that day his mental powers had gone. After his return from Marianne I saw him very often. When he came from Marianne he went to his house at La Digue. His brother, his sister and his manager, one Payet looked after him then. Dr. Francis was looking after him

during the time he was at La Digue. When people asked him questions in my presence he did not give sensible answers. It is correct that he exposed himself frequently on his bed. He did expose his private parts. When anybody came in he made no attempt to cover himself. I remember when he came over to Mahe but I don't remember the exact date. What I have been telling the Court took place before he left La Digue for Mahe. That was after he came from Marianne and before he left for Mahe. After he came from Marianne I never had occasion to see him in a normal state. Before his illness at Marianne, I had business dealings with him. I was not present when he was taken from La Digue to Mahe. I did not see him in Mahe. I saw him when he returned to La Digue from Mahe. I sent the boat to fetch him from the launch. He was lying on a stretcher. When they put him on the Pier I greeted him "Hallo Augustin" but he did not recognise me. He did not reply to me. He died about one or two weeks after his arrival at La Digue. During that period I did not see him again. When he was at La Digue after he arrived from Marianne I saw he had fouled his bed several times.

NO XXM.

No.44

MARIA NIDZA LADOUCEUR

Maria Nidza Ladouceur, wife of Jean Lesperance (Sworn) I live at La Digue. I knew the late Augustin Choppy. I knew him when he lived at La Digue. I have known him from my childhood. I am now 50 years old. I remember that about 3 years ago he went to Marianne in apparently good health but when he returned he was sick. I saw him in his house at La Digue after his return from Marianne. He was lying on his bed. He did not know me. He was bedridden and could not look after himself. I formed an opinion his mental state had deteriorated. When I greeted him he answered me another thing. After his return from Marianne he was at all times not normal whenever I was with him. He

In the Supreme Court of Seychelles

Plaintiffs' Evidence

No.44

Maria Nidza Ladouceur
5th November 1959
Examination continued

never had a lucid interval when I was there. I do not know if he was taken to Mahe in the middle of 1956. I never saw him in Mahe. When he returned to La Digue from Mahe I did not see him. I did not see him arrive on a stretcher. When I went to see him his clothes were always untidy. I have seen him uncovered and when I came in he did not take any steps to cover himself. Donald Payet, his Manager, looked after him.

No XXM.

No.45

Clara Ernesta
5th November 1959
Examination

No.45

CLARA ERNESTA

Clara Ernesta (Sworn). I live at La Digue. I knew Augustin Choppy. I know that about 3 years ago Augustin Choppy left La Digue for Mahe. He left La Digue in July 1956. I knew him in La Digue before he came to Mahe. In Mahe he stayed somewhere at Royal Street. I did not go to see him at Royal Street. I do not know to whom belonged the house he was staying in. I know what happened toward the end of 1956 between Augustin Choppy and Louise Choppy who was then staying in Mr. Kersley St. Ange's house. On that occasion Donald Payet, Louise Choppy and myself were present. Someone from Adam Moosa came to fetch Mr. Kersley St. Ange and Miss Louise Choppy in a car. After they had been taken to Moosa, the car went for Mr. Augustin Choppy. I saw what happened. Mr. Kersley St. Ange did not come. Miss Louise and Donald Payet went into the Shop of Moosa and I stayed under the verandah outside. Apart from Louise and Augustin Choppy and Donald Payet there were present the staff of Moosa. Outside the shop there were Harry Bibi, Auguste Bibi, Andrea Bibi, Louise Choppy and her brother were talking inside. As Miss Choppy and her brother were talking inside the shop, the three Bibis came in and took off Mr. Augustin Choppy and put him inside a car. They lifted Augustin Choppy in an armchair and put him in the car. At that time he was helpless.

No XXM.

No.46

FRANCE MUSSARD

In the Supreme Court of Seychelles

Plaintiffs' Evidence

No.46

France Mussard
5th November 1959
Examination

France Mussard (Sworn). I live at La Digue. I am a Coxswain. I knew the late Augustin Choppy. I have known him for 19 years. I know the boat Marianna. I worked on it. It belonged to the Heirs Choppy. I mean the brother and sister of Augustin Choppy - Antoine, Agustin and Louise Choppy. I had some arrangement with Augustin Choppy about the Marianna. One day Augustin Choppy sent for me and wanted me to work on the Marianna. It was in May 1955. When I had arrived there he sent for Antoine and Louise to fix up the agreement. The agreement was made and it was agreed by Augustin, Louise and Antoine Choppy that I should hire the boat for Rs 150 a month. I paid the boat's rent to Donald Payet. The agreement lasted until the death of Augustin Choppy. Then Harry Bibi and Mericia Bibi cancelled the agreement and took the boat over. They seized the boat from me. When I arrived at the Long Pier they came with a police sergeant and a constable and told me the boat was theirs. They took the boat from me. I have seen Augustin Choppy when he was in Mahe. When I went to see him in Mahe he was living in a little house at Royal Street. He was staying in a small house next door to his wife and children. By wife, I mean Mericia. It was in September 1957 that I saw Augustin Choppy for the last time. In Royal Street when I went to see him he was alone when I arrived but as soon as I enter the house people from Mericia's house would follow me in. I have never had the chance to talk to Augustin Choppy alone. When I managed to see him in September I greeted him and he asked me who I was. When I asked him questions he could not answer me in a sensible manner.

No XXM.

In the Supreme Court of Seychelles

Plaintiffs' Evidence

No.47

Roubion Camille
5th November
1959
Examination

No.47

ROUBION CAMILLE

Roubion Camille (Sworn). I live at Victoria. I am a retired proprietor. I have known the late Augustin Choppy. I have known him since our childhood. I have seen him frequently. In 1956 I was living in Royal Street and I am still living there. I know nothing about Augustin Choppy at La Digue. In Victoria I used to visit him every 2 days. He lived in Royal Street. When I noticed he was getting worse I went to see him every afternoon. It was eight days before he left Mahe that I noticed he had got worse. He left Mahe in November. On the eve of his departure for La Digue I saw him in the afternoon. In the afternoon of the 2nd November I went to Mr. Choppy's place. When I saw him on that day he was in a very bad condition. I spoke to him and he did not answer me. He did not tell me he was married. I cannot say whether he could speak or not. He did not talk to me. He was sleeping with his back towards me. On that particular afternoon I was alone with him. I stayed with him for about a quarter of an hour. I think that he was asleep at that time. I called him and he did not answer me. I noticed he was dying. He was deficient of his mental faculties. On the 1st November I saw him. Every afternoon for 8 days before he left I saw him. Somebody told me Augustin had passed all his properties and that is what fixed the 2nd November in my mind. I know nothing about any ceremony but I was seeing him every afternoon then. From the time I saw him daily I do not think he was in a fit state of mind to settle properties. The 8 days I saw him daily immediately preceded his departure for La Digue.

No.48

Donald Payet
5th November
1959
Examination

No.48

DONALD PAYET

Donald Payet (Sworn) I live at La Digue. I am a propriator. I am also called "Bouquet". I was for many years the manager of the late Augustin Choppy. I have worked for him for

28 years. At the beginning Augustin Choppy used to look after the property himself. When I said I worked for him for 28 years I meant I lived in the same place as him and saw him daily. I was 14 years when I started work with him. It was in 1956 that I noticed he could not look after his business.- It was in April 1956. I remember April 1956 because I went to fetch him from Marianne on the "Aroha". From that time onwards he was never the man he had been. After April 1956 I remember one instance when the servants brought bananas and cassava to him he took the bananas and said they were cassavas. When he had returned from Marianne I saw him daily. Antoine and Louise Choppy and myself looked after him. He was bedridden and was unable to do anything. The banana and cassava incident were frequently repeated. From the time he was brought from Marianne he never recovered his faculties even temporarily. At times he recognised me, at times he did not. I helped to put his clothes on. Antoine and Louise Choppy also helped. It is correct that Choppy was taken to Mahe in July 1956. I did not accompany him. I saw him in Mahe in October 1957. I saw him for the first time in Mahe in January 1957. In January 1957 he was in the same state as he had been in La Digue. There was no improvement in his mental condition, he told me he was suffering heavily from his head. He was still helpless in bed. Then I saw him in October 1957. The incident in Moosa's shop took place in January 1957. Moosa sent for Augustin Choppy by car. Then Moosa sent for Miss Louise from Kersley St. Ange's place.

Court: Case is adjourned to the 6th November at 2 p.m. for continuation (sd) D. Ah-Lock, Ag. Registrar.

6th November 1959

Sitting of Friday 6th November 1959 before His Lordship E.N.Taylor, Judge ad hoc, assisted by the Undersigned Registrar. Mr. Thomas and Mr. Loizeau for Plaintiffs. Mrs.Collet and Mr. Valabhji for Defendants leave default. Defendants leave default. (At this stage Mr. Thomas asks Court for permission to interpose medical witness).

In the Supreme Court of Seychelles

Plaintiffs' Evidence

No.49

Dr.Edna Collie
6th November 1959
Examination

No.49

DR. EDNA COLLIE

Dr. Edna Collie (M.B., Ch. B., (Glasgow)) (Sworn). I am a registered Practitioner in Seychelles. I am also employed by the Government of Seychelles as a Medical Officer. In November 1957 I was in private practice. I knew the late Augustin Choppy. I attended him as a Medical practitioner. I attended him from 21st October 1957 until 4th November 1957. I saw him for the first time on 21st October 1957. I was sent for to attend to him. At that time he was living in Rue Royale, Victoria. When I first saw him he was very ill, he had been suffering from acute gastro enteritis, he was febrile, he had a temperature of 103? He was very dehydrated. He was dehydrated from excessive vomiting and diarrhoea which he had been having. It was difficult to examine him completely because he would not co-operate. Mentally he was disorientated. During the time I attended him I noticed no improvement in his mental condition. I do not think Augustin Choppy had the "plenitude d'intelligence" required to contract a marriage. By Court: From the 21st October to the 4th November, I saw him on the 21st, 25th, and 30th October and the 4th November. It is unlikely that there had been an improvement in his mental condition between the 30th October and 4th November. On the days I saw him I could not get through to him at all. NO XXM. Q. by Mr. Thomas through Court. Q. Where was your surgery and were you in attendance daily? A. My surgery was in Government House Avenue. Q. If they had sent a message to you on 2nd November could you have gone? A. Yes I would have gone, I was in the surgery that morning.

10 20 30

No.50

Donald Payet (Recalled)
6th November 1959
Examination

No.50

DONALD PAYET (Recalled)

40

Donald Payet (Sworn) (Examination continues). In January 1957 Moosa brought Augustin in a car to the shop. Miss Louise Choppy, Clara Ernesta and myself were present. I was inside the shop.

Clara Ernesta was also inside the shop. Andrea, Harry and Auguste Bibi were with Mr. Augustin Choppy. Miss Louise got in and kissed and greeted Augustin Choppy. He was already in the shop when Louise Choppy came. Augustin asked of Louise "What accounts are you looking for, we are all living in one family". Then Miss Louise asked him if he had made a Will. Augustin replied he had made no will. He swore that he had not made any will. The money from the Choppy Estate were kept at Moosa. The accounts were kept at Moosa. After Choppy had said that he had made no Will, one of the Moosa staff wanted to get Augustin Choppy out of the shop as he had dirtied his trousers. Augustin Choppy did not want to go out. He said: "Why do you want me to go, I have not finished talking to Louise". They did not want to let him finish talking - they took him out straight away. Harry, Auguste and Andrea Bibi took him away. I dressed Mr. Augustin Choppy when he was at La Digue. When I dressed him I took care that he was properly buttoned, I myself buttoned his clothes. Soon after I would find his clothes unbuttoned. He undid his clothes through squirming on his bed. He could not cover himself if people came in.

NO XXM.

No.51

PLAINTIFFS' COUNSEL'S ADDRESS

Mr. Thomas. This is my case. Mr. Thomas argues: I do not propose to address Court at length on the evidence. Expression used in the local Ordinance is "marriage in articulo mortis". The Civil Status Ordinance sets down the rules as to when such a marriage can be allowed. Cites S.78-80 of Civil Status Ordinance. These sections govern marriage in Articulo Mortis. I don't think if in English Law such a marriage is possible. In old French Law it was prohibited. It was latterly allowed after much opposition. Reasons for this is that it would have been so easy for a woman to get hold of a feeble old man and marry him. Marriage here is called in "articulo mortis". In French Law it is called "mariage in extremis". Cites Littre page 1079. The French use "in extremis" and "in articulo

In the Supreme Court of Seychelles

No.51

Plaintiffs' Counsel's Address 6th November 1959 continued

mortis" as meaning the same thing. Whether we use "in extremis" or "in articulo mortis" the same rules apply. Marriages "in articulo mortis" very strictly controlled, Main point is this - "no such marriage shall be celebrated unless both parties can signify their consent and fix their signature or mark". Interesting to note that Augustin Choppy who could write and handled all his affairs only affixed his mark to the marriage certificate. Refers to S.79(1). - presence of medical practitioner or 4 witnesses. Ordinance requires presence of medical practitioner to protect the interests of the party being married. Dr.Collie attended Augustin 2 days before and 2 days after the purported marriage. We have heard the evidence of Dr. Collie about the state of mind of Augustin Choppy and this is the reason she was not called as a witness. Dr. Collie has said she could not get through to Augustin Choppy on all occasions she visited him. She also said she did not think Augustin Choppy could give his consent or understand what he was doing. Peculiar that Dr.Collie was not called for the marriage. 3 of the witnesses were the Bibi family who were legitimated by the purported act of marriage. Augustin Choppy only made a cross. Submit that on 2.11.57 Augustin Choppy was unable to signify his consent to the purported marriage. Law is extremely vague as to whether the priest has to sign or not. Capacity to signify consent - most important witness is Dr.Collie. Dr.Collie said that there was little likelihood that the deceased got better for a day or two and then relapsed. Dr. Collie very very clear on that point. No hesitation or qualifications. Evidence was brought to show when Augustin Choppy started to decline. All witnesses agree on April 1956 - after the return from Marianne to La Digue. Augustin Choppy could not recognise his manager or his brother at times. He was unable to answer questions properly. He was brought from La Digue to Mahe although he did not want to go. The cluster of Bibis did not let him see his own family. Whenever people came to see him the Bibis were always present. His own brother did not see him before he died. Refers to the Moosa incident. Augustin Choppy was taken forcibly away from Moosa's shop. Refers to evidence of Father Chang Tave - words alle faire foutre couyon - Not normal to say these words to a priest. Cites M.L.R. 1911 page 20 "Loochmaya vs. Soobraty". Extremely indecent to

In the Supreme Court of Seychelles

No.51

Plaintiffs' Counsel's Address 6th November 1959 continued

say "alle faire foutre" to a priest who has been invited to call. This incident again shows that Augustin Choppy was unable to signify his consent to the marriage, Refers to evidence of Roubion Camille. Camille visited him daily before the 2nd November and after the 2nd November and yet Augustin Choppy did not tell tim about the marriage although they were close friends. Camille must have visited him on day of alleged ceremony. Submit that basically the requirements to a consent of marriage are the same in English and French Laws. Submit Augustin Choppy had not got his full reason when the purported marriage took place. Cites Dalloz Jurisprudence Generale 1872 Part II page 109 - Marriage in extremis etc. Consent means that a man is in full possession of his faculties. If there is no consent there is no marriage. If Choppy was unable to form an intention the parties could not be ad idem. Whatever the previous adverse ruling in this action it was incumbent for Defendants to come and cross examine the Plaintiffs' witnesses. Asking Court for a judgment in the form set out in the prayer of the plaint.

No.52

No.52

Oral Judgment 6th November 1959

ORAL JUDGMENT

Court delivers oral judgment as follows :- In my view the Plaintiffs have discharged the onus on them - heavy though it is. The deceased was clearly not capable of giving a valid consent on the 30th October or 4th November - it is, on the medical evidence improbable that he could have had a sufficient lucid interval and on the other evidence - particularly that of Roubion Camille highly improbable that he in fact had one. Three of the witnesses were interested persons. Judgment for plaintiffs with costs. Declaration that the purported marriage was void. Order that the Register of the Civil Status be rectified accordingly by expunging the act of marriage and the memoranda of legitimation in the birth certificates of the children. Formal minutes of the judgment to be settled in Chambers if necessary. Draft to be submitted to Chief Civil Status Officer before sealing. (sd) D. Ah-Lock, Ag. Registrar.

In the Supreme Court of Mauritius

No.53

Grounds of Appeal 23rd January 1960

No.53

GROUNDS OF APPEAL

IN THE SUPREME COURT OF THE COLONY OF MAURITIUS AND ITS DEPENDENCIES.

In re:-

1. Mrs.Mericia Angela Choppy;
2. Mrs.Mericia Angela Choppy, here acting in her capacity as legal guardian of the minors: Andrea Choppy, Mary Choppy, Benjamin Choppy, Robert Choppy and Michol Choppy.
3. Auguste Choppy;
4. Auguste Choppy, here acting in his capacity of sub-guardian of the minors:- Andrea Choppy, Mary Choppy, Benjamin Choppy, Robert Choppy & Michol Choppy.
5. Harry Choppy,
6. Mad. Doly Choppy,
7. Luce Choppy,
8. Noe Choppy,
9. Harry Choppy, here acting in his capacity of "tuteur ad hoc" of the minors:- Andrea Choppy, Mary Choppy, Benjamin Choppy, Robert Choppy & Michol Choppy - all of them of La Digue Island, Seychelles. APPELLANTS.

v/s

Antoine Choppy and Louise Choppy both of La Digue Island, Seychelles. RESPONDENTS.

TAKE NOTICE that the Appellants in the above matter feeling themselves aggrieved by and dissatisfied with the judgment delivered by the Supreme Court of the colony of Seychelles (the Hon. E.N. Taylor, Judge "ad hoc") on the 6th November 1959, whereby the marriage of the first Appellant (then first Defendant) with Augustin Choppy was declared null and void and the acknowledgement and legitimation of the other Appellants (then Defendants) by the said marriage were ordered to be expunged from the Civil

Status Registers, with costs, do hereby appeal against the said judgment and against all the rulings delivered by the said Supreme Court of the colony of Seychelles during the various hearings of the suit at various times, to have same quashed, dismissed, set aside, amended or otherwise dealt with as the Supreme Court of the colony of Mauritius and its Dependencies may think fit and proper, on the following grounds :- The grounds of appeal

1. The matters in issue are of "Ordre Public" and so are the various statutes and rules of procedure laid down by law to govern them, and there can be no "compromis" as regards, or waiver of these statutes and rules.

2. The Law governing nullity of marriage, the causes thereof, and the procedure for obtaining such nullity on whatever grounds allowed by law in any relevant statute whatsoever is to be found in the Matrimonial Causes Ordinance, Caput 91 of the Laws of Seychelles and the rules enacted thereunder by Proclamation of the Governor of Seychelles. These Statutes and rules are obligatory and mandatory and there cannot be any waiver of them.

3. The divers "statements of claim" or "plaints" of the Plaintiffs in their successive drafts or recasts constitute a request to the Court for a declaration of the nullity of a marriage and such request should have been entered by petition according to the statutes and rules cited in paragraph 2 of these grounds of appeal.

4. According to the statute above cited, section 6, "the jurisdiction vested in the Supreme Court (sections 4 and 5) relating to Matrimonial Causes shall so far as regards procedure and practice, be exercised in the manner provided by this ordinance or by rules of Court ...." and the Supreme Court of Seychelles had therefore no power or jurisdiction to hear an "action" for nullity of a marriage otherwise than according to the aforesaid statutes and rules and the "action" entered by the Plaintiffs should even without the defendants' motion have been dismissed by the Court, the matters in issue and the rules being of "Ordre Public".

In the Supreme Court of Mauritius

No.53

Grounds of Appeal 23rd January 1960 continued

In the event all the proceedings before the Supreme Court of Seychelles are null and void being vitiated ab initio by the failure of the plaintiffs to enter their suit according to the statute and the rules.

5. The issue of acknowledgment and legitimation of the children being inseparable from the issue of validity ex facie the pleadings themselves and as shown by the evidence led before the Court and by the judgment of the Court could not be tried and was not tried otherwise than jointly with the issue of validity and falls together with the issue of validity on the point of jurisdiction.

6. The motion argued on the 10th and 11th August should have been allowed by the learned judge. No reasons were given for dismissing the motion but it is apparent that it was dismissed because the learned judge accepted the submission of Counsel for the Plaintiffs that "marriage in articulo mortis" in so far as regards the procedure for the annullment thereof is concerned, is not governed by the Matrimonial Causes Ordinance and thus that such marriages as far as their nullity is concerned are not "matrimonial causes". Counsel for the Plaintiffs admitted that in matters of dissolution of such a marriage, the Ordinance applies.

7. The learned judge was wrong to refuse, on Counsel's opening and before arguments, to take off the record the arguments before Mr. Acting Justice Rassool (ruling of 11th Aug.1959) the said arguments and the ruling of Mr.Acting Justice Rassool having been made and given on abrogated law in which all the Counsel at that time acting for the parties and the judge himself concurred, more especially as there is on the record an intimation by the Hon. N.P.F., Bonnetard C.J. that these proceedings before Mr. Justice Rassool should be taken off the record.

8. On the abrogated law argued by the Plaintiffs before Mr.Justice Rassool the Plaintiffs had no standing and were incompetent to apply for a nullity of the marriage the abrogated law not giving them that right.

9. The learned judge was wrong to deprive

the Defendants of the right to enter an amended defence to the last recast plaint even if the service of the said plaint was wrongly refused, because:- (1) No delay had been fixed for entering such a defence; (2) There is no statutory delay for entering a defence in the Seychelles Law of Civil Procedure; (3) the last recast was materially different from the previous recast.

10. The last recast of the plaint was rightly refused by one of the attorneys of the Defendants - no attempt was made to serve it on the other attorney - because: 1. It was not intituled as the original plaint. 2. The names of the Defendants had been altered.

11. The learned judge was wrong:- (a) to entertain the motion that the "service had been refused and that it should be taken as good service" because in the circumstances no refusal of service is provided for by the Seychelles Code of Civil Procedure and that motion was unnecessary as the Court could have proceeded with the suit defendants making default as in fact subsequently happened. (b) to order the costs to be recovered from one of the attorneys for the defendants.

12. The learned judge was wrong to allow the statement of the celebrant of the marriage on the act of marriage as follows :- "...apres que le dit Augustin Choppy m'ait declare solennellement qu'il se considere veritablement in articulo mortis, apres que les dites parties contractantes m'aient declare, en presence des temoins et des parents soussignes, qu'ils consentent a se prendre respectivement pour mari et femme ... etc". to be attacked by oral evidence and otherwise than by the procedure of INSCRIPTIO FALSI, and in the absence of the celebrant and the admittedly independent witness.

13. It is not necessary, in law, for a marriage act to be signed by the celebrating officer and by the witnesses, and by the parties, and such absence of signatures does not make the marriage null and void. The celebrant did sign.

14. It is incompetent in law for any person

In the Supreme Court of Mauritius

No.53

Grounds of Appeal 23rd January 1960 continued

other than a party to the marriage to attack a marriage in nullity on the grounds of non-consent and unsoundness of mind by the law the Code Napoleon as argued by the Plaintiffs or the local statutory law.

15. The witnesses were not incompetent.

16. The mark made by the de cujus in place of a signature was a valid mark, and he need not even have signed the act of marriage.

17. There was no evidence that the de cujus was incapable of understanding what he was doing when consented to the marriage, or that he was of unsound mind, and if there was such evidence then it was wrongly admitted. (see also para. 12 above).

18. Even if the Court had jurisdiction to try the issues on a simple action entered by plaint, an essential element of that jurisdiction is domicil, and it was not alleged and not proved to the Court that Augustin Choppy was domiciled in Seychelles.

19. The Statute, Caput 91, section 18 was not complied with.

20. Bad faith of the widow was not pleaded, and not proved as against para.10 of the defence and in consequence, even if the marriage is null and void, the children are the legitimate children of the said Augustin Choppy and Mericia Choppy nee Bibi.

The Appellants have fulfilled all the formalities required by law for the due prosecution of their appeal in the Supreme Court of Mauritius until the final determination by the said Appellate Court.

And for all other reasons to be given in due course.

With costs against the Respondents jointly & severally.

Under all legal reservations.

Date at Port Louis, this 23rd day of January, 1960.

(Sd) J. Andre Robert

Of No.8, George Guibert St.Port Louis,
Appellants' Attorney.

No.54

In the Supreme Court of Mauritius

No.54

Proceedings 21st March 1960

PROCEEDINGS

On Monday the 21st day of March, 1960

Before the Honourable R. Neerunjun, Chief Justice.

the Honourable R. Osman, Judge.

1935 - MRS. A. CHOPPY & ORS v/s A. CHOPPY & ANOR.

J. Koenig appears for Appellants.

P. Leclezio replacing Mr.Thomas of the Seychelles Bar appears for Respondents and states that Mr. Thomas has booked a passage to reach Mauritius on 21.7.60.

The case is fixed on its merits to 25th and 26th July and if necessary to 27th July 1960 also.

(Sd) A. Leong Son
for Master and Registrar.

On Monday the 25th day of July, 1960 — 25th July 1960

Before the Honourable R. Neerunjun, Chief Justice

and the Honourable H. Glover, Judge.

1935 - MRS. A. CHOPPY & ORS. v/s A. CHOPPY & ANOR.

J. Koenig appears for Appellants and he introduces to the Court Mr. E. Thomas of the Seychelles Bar who appears for Respondents with P. Leclezio.

Koenig addresses the Court.

He states that he shall deal with the grounds of appeal in the following order: grounds III & II together, then grounds I, IV, V & VI. He

In the Supreme Court of Mauritius

No.54
Proceedings
25th July 1960
continued

adds that these six grounds are the most important ones - as they deal with the question whether the procedure which has been adopted in this case is the proper one.

He states that the description "nullity of marriage" appearing in the statement of claim will help the Court to know the real nature of the action which was before the Court of Seychelles.

He refers to the following procedures :-

1. Acknowledgment of child in the act of birth.

2. Acknowledgment by notarial deed.

3. Acknowledgment in order to legitimate in an act of marriage.

4. Acknowledgment & legitimation of a child "in articulo mortis",

He states that No.4 is ultimately connected with No.3 above.

He refers to Sections 78, 79 & 80 of Cap. 26 of Seychelles - Vol I p.159, Form IV of Schedule B at p.177, Section 71 (1) at p.156.

He draws the attention of the Court to the difference between an ordinary acknowledgment of a natural child and the legitimation of natural children even when not yet acknowledged by one or both parties in a marriage "in articulo mortis".

He submits that the ordinary acknowledgment of a natural child can be an ex parte act and that the acknowledgment in a marriage in articulo mortis" requires the consent of both parties.

He submits that legitimation in marriage consists of two juridical acts: marriage and legitimation.

He submits that legitimation cannot exist without marriage whereas marriage can exist without legitimation.

He submits that legitimation is integrated in marriage and forms part and parcel of it in the sense that without the marriage it has no existence.

He states that the Matrimonial Causes Ordinance of Seychelles is drawn from the Matrimonial Act of England.

He refers to Latey on Divorce 14th Ed. p. 354 para. 739 & p. 355 para. 741. He states that in England also legitimation flows from the previous marriage of the parents but that a petition should be entered under the Matrimonial Act before legitimation can take place which is not the case in Mauritius and in Seychelles.

He refers to para.9 of the original statement of claim which he submits is most important as it goes to the root of the case.

He submits that it is clear from sub-paras. (c) & (d) of para.9 of the Statement of Claim that the Plaintiff's intention was to attack the document witnessing the marriage and that sub-paras.(c) & (d) refer to the nullity of the juridical act which has nothing to do with the instrumentum whereas in the prayer the nullity of the instrumentum is asked for and there is no demand for the nullity of the juridical act.

He submits that the legitimation cannot be declared null and void without first annulling the Act of marriage itself.

He refers to Planiol and Ropert - Vol. I. para.204 at p.263 and to para.221.

He submits that the final plaint was drawn up by his friend Thomas and the learned Judge.

Mr.Thomas states that this does not appear on the record.

Koenig refers to page 87 of the brief.

He states that the Plaintiffs thought that they could enter the action under Section 103 of Cap.26 (Seychelles).

In the Supreme Court of Mauritius

No.54

Proceedings 25th July 1960 continued

He refers to paras, 221 & 222 of Vol.I Planiol & Ripert and to section 104 of Cap.26.

He submits that after various amendments the 5th plaint for the first time asked that not only the instrumentum but also the juridical act be annulled.

He states that nullity of marriage in Seychelles was governed until 1949 by articles 180 to 193 of C.C. which were abrogated in 1949 and replaced by the Matrimonial Causes Ordinance, Cap.91 Vol II P.1077 (Seychelles).

He submits that articles 180 to 193 of C.C. had nothing to do with the procedure.

He refers to Sections 3, 4, 5 & 6 and Sect. 14 (2) of Cap.91.

He submits that there is practically no difference between nullity and dissolution of marriage.

As to the legal aspect of the enactment of a procedural law, he refers to Maxwell 10th edition p.376 & p.379 & p.380 note (m).

He submits that the Judge has no jurisdiction to hear the parties in the plaint in the present case as the procedural law has not been adhered to.

He quotes: M.R. 1861 - p.165 case of Rigolet; Latey p.1 paras.1 to 4 esp. p.2. note (a).

He states that we are brought to make a difference between nullity and dissolution of marriage when the procedure for both is the same. He stresses the fact that a marriage is a very important institution, being the "cellule vivante de la societe".

He refers to Planiol & Ripert Vol II paras. 311, 313 and following and submits that nullity or dissolution of a marriage, is a matter of public order as it is important to the public at large.

He submits that it is in the interest of the public to know the status of the Defendants.

He refers to:- Crays on Statute Laws, 5th Edition p.250 para X cap.91 section 16 (eventual intervention of the Attorney General) Sections 40 & 41 of Cap.91 (right of appeal) Section 18 Cap.91 (about decree nisi and decree absolute).

He submits that the grounds of the plaint being taken straight from the Matrimonial Causes Ordinance, the Plaintiffs should have entered their action by way of petition.

He refers to Latey paras.41-60-61-67-70-71 to 73 & 75 to 80 about the numerous forms of marriage in England - and to paras.82 to 84 on the rights of English Courts to examine the validity of marriages celebrated outside England.

Koenig now addresses the Court on the particular grounds of appeal.

Ground I. He states that the first part of that ground has already been covered. As regards the 2nd part of this ground he refers the Court to: p. 101 of brief - sitting of 11.8.59; p. 136 of brief - letter from Attorney for Defendants; p. 137 of brief - corresponding letter from Attorney for Plaintiffs; Maxwell page 392 - Rubric: Jurisdiction by consent.

Ground IV. He submits that the Judge had no jurisdiction to hear the case on a plaint with summons and should have raised the point ex-officio.

Ground V. He submits that the pleadings clearly hit at the nullity of the marriage. He refers to and comments upon the various amendments of the plaint.

He submits that the recast plaint raised for the first time the nullity of the marriage.

On a question from the Court Koenig submits that there is only one case as legitimation cannot be declared invalid urless the marriage itself is first declared invalid.

He refers to p. 98 of the brief - Statement of Mr. Thomas that if one of the spouses had not

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died the procedure should have been entered under the Matrimonial Causes Ordinance.

He submits that the legislator has not left marriages in articulo mortis outside the Matrimonial Causes Ordinance.

He submits that under Sect.103 of the Civil Status Ordinance the juridical act of marriage cannot be attacked - and that this can only be done under the Matrimonial Causes Ordinance.

On a question from Court, Thomas states that the reasons of the interlocutory judgment by Mr.Justice Taylor was never filed because no one asked for the filing of same as the Defendants had withdrawn from the case.

Koenig submits that the Judge should have given his reasons for rejecting the first motion which raised the question of jurisdiction. He refers to two other appeals from Seychelles where reasons of judgment were filed by the same Judge after reasons of appeal had been filed. Koenig states that the procedure agreed upon by the trial Judge and his friend Thomas was irregular.

Thomas objects that his friend Koenig is going outside the record.

At this stage the case is adjourned to tomorrow 26.7.60 for continuation.

(Sd) A. Leong Son
for Master and Registrar.

26th July 1960

On Tuesday the 26th day of July 1960

Before the Honourable R.Neerunjun, Chief Justice

and the Honourable H. Glover, Judge.

1935 - MRS. A. CHOPPY & ORS. v/s A. CHOPPY & ANOR.

J. Koenig appears for Appellants

E. Thomas (P. Leclezio with him) appears for

Respondents.

Koenig continues his address to the Court.

Ground V. He states that he cannot agree with his friend Thomas (p. 77 of brief) that there are really two actions in this case. He submits that there is only one case as the nullity of legitimation can only flow from the nullity of marriage.

COURT: Assuming that there are two separate actions with two separate procedures, how can the two procedures find their way in the same action?

KOENIG: That point has been examined by the legislator in Sections 5 & 6 of the Ordinance.

He states that although section 3 of the Matrimonial Causes Ordinance has been defined yet when we came to the jurisdiction of the Court there are Sections 5 & 6.

He states that the legislator must have thought that legitimacy as an abstract proposition flows from marriage.

He submits that being given the policy of the law, even an action for a declaration of legitimacy must be entered under the Matrimonial Causes Ordinance and that an action claiming the cancellation of legitimacy connotes the idea that such action must bring out the nullity of the marriage.

IInd part of ground V. He submits that from the opening speech of his friend Thomas (page 108 of brief) it is clear that unless he attacks the marriage he has no locus standi.

He submits that it is clear from the evidence that the point of plaintiffs was to attack the marriage (pp. 109-113-121 evidence & p. 125 judgment).

Ground VI. He refers to the motion pp.32 to 35 of brief. He comments on the failure of the Judge to give his reasons for rejecting the motion of the newly appointed counsel who was trying to raise for the first time the question

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of jurisdiction.

He submits that a marriage in articulo mortis is the same as an ordinary marriage. He refers to Planiol & Ripert Vol II para. 154 para. 198 & page 164 para. 2 about the two details which in France distinguish a marriage in extremis from an ordinary marriage Viz (1) absence of publication and (2) celebration outside the "mairie".

Ground VII. Koenig states that the remaining grounds are only alternative and should be considered only if the appeal does not succeed on the grounds already covered.

He refers to the facts relating to ground VII.

He submits that a ruling based on the assumption that articles 180 to 193 of C.C. were still in force could only be prejudicial to the defendant's case.

He submits that in fact the pleas in limine litis have never been tried and that only for that reason this case should be returned to the lower Court for a retrial if the appeal fails on the first part.

He refers to the order of C.J. Bonnetard for a rehearing of the preliminary points (p.92 brief) and comments on the fact that these points were not re-heard.

He refers to Section 152 Vol II p.1315 (Seychelles).

Ground VIII. Koenig does not press this ground.

Ground X. He states that he shall argue only on the first two lines of the ground.

He submits that the recast of the plaint is completely illegal. He submits that assuming that the procedure by plaint with summons is correct the judgment which is based on the illegal recast plaint is also illegal.

He submits that the proceedings in Chambers

relating to the recast of the plaint were irregular.

He calls the attention of the Court to the protest of Mrs. Collet. He submits that if the appeal fails on the question of jurisdiction the judgment which is based on the illegal recast plaint cannot stand.

He submits that the recast plaint has changed the nature of the action. He comments on the fact that the recast plaint deprived the defendants of the name of Choppy to which they are entitled by law until and unless the marriage is declared invalid.

He comments on the new prayer introduced in the recast plaint. He submits that service of the recast plaint was rightly refused by Mrs. Collet and submits that his friend Thomas has no right to act as an Usher.

Court observes that on one occasion Mr. Loyseau has refused service on behalf of the Plaintiffs.

Koenig submits that Mrs. Collet must have read the recast plaint before refusing service thereof - and must have seen that the legal name of the defendants did not appear thereon.

He states that in present case there had not been an election of domicile. He refers to:- Section 39 Cap. 101 - service of process. Matrimonial Causes Rules Vol IV Rule 2 para.6; M.R. 1955 p.300 at page 305 - Collet & Anor v/s Albert.

He submits that the recast plaint not only should never have found light but should never have been served and that Mrs. Collet was fully justified to refuse to accept service thereof.

He submits that the judgment based on the recast plaint is wrong.

Grounds IX & XI. He comments on the fact that no reason was given by the Judge to grant the motion for validity of service and on the refusal of the Judge to allow the motion for an amendment of the

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Statement of Defence.

He submits that the case has been proceeded with without a statement of defence which constitutes a masquerade and caricature of justice which is against the integrity of a member of the Bar to accept.

Ground XII. He submits that if it is contended that the priest celebrant had committed a forgery, the juridical act can only be attacked by way of Inscriptio Falsi.

He quotes Planiol & Ripert Vol I p.261 para. 202 & Vol. II p.168 para.206.

Ground XIII. Koenig states that he has some doubt as to the justification of this ground. He moves to reserve his argument on this ground until he has heard what his friend Thomas has to say on it.

Court rules that the suggested course is not practical.

Koenig comments on the fact that the original act of marriage was not put before the Court thus rendering it difficult to know whether the priest did sign the act or not.

He submits that the priest could have signed after the words "maries par moi".

He submits that the law is very vague as to whether the priest must sign or not and he refers to sect.76 to 78 of Seychelles Civil Status Ordinance.

He states that form Iv does not provide for any space for the signature of the celebrant, whereas in form III such a space is provided. He submits that the absence of the signature of the celebrant is not fatal and he quotes Planiol & Ripert Vol.I para.204 at p.265 and Section 108 of Completion of Acts.

Ground XIV. He refers to Planiol & Ripert Vol. II p.312; Latey p.582.; case of Farmouth & Ors. v/s Watson.

He submits that under French Law the

Plaintiffs have no right of action and that under English Law they can have such a right to claim for the nullity of the marriage provided they proceed under the Matrimonial Causes Ordinance.

Ground XV. He states that he shall not press this ground as the Judge used the word "interested" and not "incompetent" for 3 of the witnesses.

Ground XVI. He submits that the mark of the de cujus is valid as under Section 76 a mark can replace a signature.

Ground XVII. He does not insist on the ground and states that this ground should have contained the following: "although by a round about way against the law of Inscription Falsi."

Ground XVIII. He states that if this action had been entered under the Matrimonial Causes Ordinance the question of domicile would be no ground. He adds that he cannot be categorical on that ground adding that the marriage having been celebrated in Seychelles, he is not prepared to say that the Court of Seychelles would have no jurisdiction to entertain an action entered by the proper procedure.

Ground XIX. He states that this ground has been dealt with with the question of jurisdiction.

Ground XX. He states that this is a complete misapprehension in law about legitimation of a child born after or before marriage. He refers to Planiol & Ripert Vol. II p.310.

The case is adjourned to tomorrow 27.7.60 for continuation.

(Sd) A. Leong Son
for Master and Registrar.

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Proceedings
27th July 1960

On Wednesday the 27th day of July, 1960

Before the Honourable R. Neerunjun, Chief Justice

and the Honourable H. Glover, Judge.

1935 - MRS. A. CHOPPY & ORS. v/s A.CHOPPY & ANOR.

J. Koenig appears for Appellants.

E.Thomas (P. Leclezio with him) appears for the Defendants.

Thomas addresses the Court.

He refers to Order 36 Rule 33 of White Book Annual Practice. He submits that it is set out in the White Book that when there is judgment by default, appeal against such judgment should be discouraged.

Koenig states that he reserves his rights to object to any objection which has not been raised by way of preliminary objection.

Thomas states that his point is not to raise a preliminary objection in limine but only to put to the Court of Appeal the proper procedure. He adds that there having been deliberate default on the part of the Defendants he thinks it proper that the Court of Appeal should hear what he has to say on this point.

He refers to Bates case, 1801 - 2 Q.B. p.233. Hudsmith case, 1885 Chan. Div. p.322.

He submits that because of the default of the Defendants it is difficult for the Court of Appeal to have all the facts of the case before it.

He states that the celebrant, an essential witness, was not called by the defence.

He states that there is nothing in the Mauritius or Seychelles Laws on how an appeal against a judgment by default should be entered

and he submits that the English Laws should be resorted to.

He refers to p.139 of brief - Notice of Appeal, under Section 138 of the Seychelles Civil Porcedure & to Section 68, 69, 70 & 72 of same. He states that he thinks the Appellants have quoted the wrong section. He submits that when one makes deliberate default, it is obvious that he does so at his risks and perils.

He submits that the default could have been a deliberate attempt to stop the trial of the case on its merits and to make this Court of Appeal decide the case on its merits without putting before it all the facts of the case.

He contends that most of the points raised in the grounds of appeal could have been raised before the Seychelles Court.

He submits that the only aim of Defendants was to go on appeal in order to reverse the judgment of the Court of Seychelles, manoeuvre which should be met with disfavour from this Court.

On a question from Court, Thomas states that although the Judge has rejected the first motion the point could have been taken again in Seychelles.

He now refers to Dalloz Periodique Vol.II 1872 p.109, Dalloz R.P. Vol.I p.142 No.176, Dalloz Encyclopedique - Acte de l'Etat Civil - Nos.170, 175, 178 & 179. He submits that Inscriptio Falsi cannot apply in this case and that assuming it does, the Court has been deprived of the priest's evidence. He submits that it was never suggested that the priest committed a forgery and that Plaintiffs' case is that the de cujus was not in a fit state of mind to know what he did or what he meant when he said yes or no.

He now examines the point whether the English Law applies to present case.

He states that Plaintiffs are bound only

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by their pleadings and not by arguments of Counsel.

He submits that it was only at the end that the Defendants argued that the case should fall under the Matrimonial Causes Ordinance, a motion which was dismissed.

He does not agree that the Judge did not give his reasons for rejecting the motion because, as suggested by his friend Koenig, he had no reason to give.

He submits that no reasons were given by the Judge because Counsel on both sides had agreed to accept the ruling of the Judge. (pp. 136 & 137 of brief).

He submits that it was the Defendants who started to argue on the abrogated law and that it was agreed by both parties that whatever was to be the ruling of the Judge the case was to be continued to be heard on its merits.

He submits that the Judge refused the motion because he had seen in the record that Counsel had agreed to accept the ruling whether right or wrong.

He submits that Defendants could not ask that a previous ruling be expunged from the record because they had made a mistake.

He submits that a ruling once made if it is wrong, it is only for the Court of Appeal to make it right.

He submits that the Matrimonial Causes Ordinance must be construed according to the English Laws.

He refers to sections 3 & 4 of the Matrimonial Causes Ordinance and submits that an action for bastardisation is excluded from that Ordinance.

He submits that the procedure by way of petition and affidavit only applies to a party to a marriage or to the guardian acting on behalf of a party to a marriage but not to a third party.

He submits that in present case the Plaintiffs could not have entered proceedings by way of petition as the affidavit would have to be based on hearsay evidence.

He submits that Section 14 of the Ordinance shows clearly that the procedure by way of petition is confined to a party to a marriage.

He refers to Rayden on Divorce 7th Edition p.67. He submits that a civil suit is the only way for an interested party to attack a marriage of which he is not a party.

He refers to Faremouth v/s Watson - English Reports - 161 at p.1009, Wells v/s Collen - English Reports 164 at p. 1316.

He submits that Plaintiffs have a right of action but not by way of petition.

He states that if the Court rules that the English Law applies, the Court must also hold that the Plaintiff's action was the only way they could make their suit.

COURT: Is there in the Seychelles Law anything to indicate what is the procedure?

THOMAS: None that I know, my Lords.

Thomas submits that Section 14 speaks of a party to a marriage. He submits that Plaintiffs took the correct procedure.

He now calls the attention of the Court to the confusion which might arise by the word "act" and its literal translation in French.

He submits that the application of the doctrine of "ordre public" has no application so far as the nullity of a marriage is concerned. He submits that it is not quite clear as to whether the nullity of a marriage would entail automatically the bastardisation of the children and he adds that this explains the declaration which has to be made under Section 103 of the Civil Status Act.

He states that it is not uncommon that in a

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case one issue is to be decided on English Law and another issue on French or Local Law. He states that acknowledgment and automatical legitimation of children in articulo mortis do not exist in English Law.

He submits that both in English and French Law, the Plaintiffs are entitled to a decree of nullity of the marriage on the ground on which the action is based.

On a question from Court, Thomas states that the action is based on the fact that the Plaintiffs have an interest in the case and that the action is based on Article 339 of C.C. and on the Matrimonial Causes Ordinance.

He adds that Articles 180 to 186 of C.C. have been abrogated but that the legislator has not deprived co-laterals to intervene and has left them the English Law.

He submits that Section 4 of the Matrimonial Causes Ordinance includes nullity of marriage and that rule 4 provides that action for nullity by co-laterals should be brought under the rules followed by the High Court of England.

He states that wherever Mauritius or Seychelles Law are silent English Rules should be followed.
(Supplementary Procedure Vol. Iv p.452).

He submits that if English Law applies he finds no reason why the Court of Appeal should interfere with the decision of the Court of Seychelles which has heard detailed evidence about the state of mind of the de cujus.

He submits that the presence of three interested witnesses obviously made the Judge suspicious.

He submits that the legislator could not have intended to deprive co-laterals of the right to attack a marriage in nullity.

He contends that the legislator must have been aware that such a right for co-laterals exists in the English Law.

He submits that his friend Koenig cannot presume anything from outside the record about the recast of the plaint.

He refers to the facts relating to the recast.

He states that it is the practice in Seychelles to go in Chambers to deal with simple questions such as amendments of plaints.

He explains that description of properties and the long descriptions of the Defendants under the name of Choppy were left out of the recast plaint simply because of a question of convenience.

He submits that a wife is not bound to bear her husband's name and he refers to notarial deeds in which a wife is always described by her maiden name.

He submits that no hardship could have been caused by the omission of the name Choppy in the recast plaint.

He submits that the objections of Mrs. Collet to accept service of the recast plaint could only be technical.

He states that Mrs.Collet had already accepted service of process on behalf of Defendants and is perfectly aware of the practice of effecting service in Seychelles.

He submits that the recast plaint has nothing in it which could have changed the nature of the action. He refers to the 1st statement of defence in which the Defendants have joined issue on the question of the marriage.

He submits that the case Collet v/s Albert is quite different from the present case.

He submits that the refusal of service by Mrs. Collet was only a manoeuvre to deprive the Lower Court to have before it the full merits of the case, a manoeuvre which should not be encouraged by this Court.

Koenig states that he has agreed that the

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judgment of the lower Court can be supported by the facts.

Thomas submits that if Civil Status Officers are bound to sign an act this must apply to a priest for marriages in articulo mortis.

Thomas agrees that there is no evidence to the effect that the de cujus could sign at the time of the marriage although there is evidence that he could sign.

He submits that the document not having been signed by the priest is not an authentic deed and that Inscriptio Falso does not apply.

He submits that the Defendants having been at fault in making deliberate default, this appeal should be dismissed.

The case is adjourned to tomorrow 28.7.60 for continuation.

(Sd) A.Leong Son
for Master and Registrar.

28th July 1960

On Thursday the 28th day of July, 1960

Before the Honourable R.Neerunjun, C.J.

the Honourable H. Glover, J.

1935 - MRS.A.CHOPPY & ORS. v/s A.CHOPPY & ANOR.

J. Koenig appears for Appellants.

E. Thomas (P.Leclezio with him) appears for Respondents.

Question from Court: Is there in Seychelles any provision in the Civil Status Ordinance corresponding to our Section 119 of Cap.39?

Thomas: If it exists here and if the law of Seychelles is silent on the point - the provision of the Mauritius Law applies to Seychelles.

Koenig rejoins

He submits that assuming his friend Thomas

has given notice of any sort of preliminary objection, there is no merit in the point raised.

He refers to:

Rule 55 of our Rules of Court on Notice of preliminary objections, Sub. Legislation, Vol.I, p.161 Section 2 - the principle of which has been applied with all severity in all appeals from Seychelles; Lalouette Digest - Appeals from Seychelles, Vol. I, p.190, para.480 to 485 Vint v/s Hutstick - 29 Chan. Div. 1885; p.222 at p.223; Harmer v/s Bait - 1881. 2 Q.B. 233; Section 136 of Cap.103 - Code of Civil Procedure p.313 and Section 74 which corresponds to order 36 Rule 30.

He submits that the procedure of moving that a case in which judgment has been delivered by default be reinstated on the cause list applies to only two instances viz.

1. When judgment was given on the return day.

2. When it is proved to the satisfaction of the Court that the party making the motion has not been served with the Summons.

He states that he cannot agree that the Defendants made default because they had no defence.

He submits that Defendants had good reasons to withdraw from the case.

He states that if the Court was deprived of the evidence of the priest who celebrated the marriage it was because the Judge did not allow a statement of defence to the new recast plaint.

He submits that Counsel for the Defendants adopted their attitude on the certainty that this Court of Appeal will not ratify all the irregularities of this case.

Court: What possible defence the Defendants could have given against the 5th plaint?

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Koenig: The point would have been raised that the case ought to have been entered under the Matrimonial Causes Ordinance by way of petition.

He submits that it is out of question that the original plaint raised the nullity of the juridical act.

He submits that the priest has recorded that the de cujus made certain statements to him and that these statements can only be attacked by way of Inscriptio Falsi.

He refers to Dalloz R.P. Vol. I, p.142 - Forces Probantes - No. 176, p 202; Encyclopedie Dalloz - Actes d'Etat Civil, No.175, para. 181.

He submits that the three preliminary points have never been tried and that the judge Taylor overruled the C.J. Bonnetard to the effect that the three preliminary points should be reheard.

He submits that C.J. Bonnetard has overruled the ruling of Judge Rassool.

On a question from Court Koenig states that Judge Rassool could have acted under Section 152 to amend his ruling which otherwise stands until it is reversed by the Court of Appeal.

On a further question from the Court, Koenig states that although he is not in a position to quote the law he thinks that a Judge can recall an Interlocutory Judgment on the same day.

He submits that collaterals can only act under the above ordinance.

He refers to Rayden on Divorce, p.67 para.6, Wells v/s Cotham, 164; English Report, p.1316, Faremouth v. Watson.

He submits that in Wells v/s Cotham the father was acting in his own right attacking the marriage of his child.

He submits that collaterals can attack a marriage but that they must act by way of petition.

On a question from Court, Koenig states that under the Civil Status Ordinance, Collaterals probably have a right of action but by way of petition.

He submits that in Wells v/s Cotham, the father rightly acted by way of petition.

Court: Under Seychelles law do you agree that there are no provisions for collaterals to sue and that they must go under the English law?

Koenig: Yes.

Keonig refers to Sections 4, 5 & 6 of the Matrimonial Causes Ordinance and to Rayden pp 66, 67 para.6 & p.270 para.32 (void and voidable marriages).

He states that he is not prepared to say that collaterals have lost their right of action but he submits that they must proceed by way of petition.

He analyses and comments on Ray v/s Sherwood - English Reports 163 p.58, para.173 of Curteiss Collection.

He refers to Encyclopedia of England, Vol. III - libel, p.162, para.184.

On the question of public order he refers to Section 16, Cap.91, p.1082.

He also quotes:

> Warter v/s Warter - Probate 1890, Vol. 50 p.35, Knowres v/s Attorney General - 1950 A.E.R., p.6, Case of Hartham - Probate 1949 p.115; Planiol & Ripert in volume called "Les Biens" under Rubris "Les noms" (wife is bound to bear the name of husband)

Thomas refers to p.67 of Rayden and submits the ground of action is that the marriage is void "ab initio".

He also refers the Court to the definition of "decree".

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The Court reserves judgment.

(s) A. Leong Son
for Master and Registrar.

SUPREME COURT OF MAURITIUS

7th September 1960

On Wednesday the 7th day of September, 1960.

Before the Honourable R. Neerunjun, Chief Justice

the Honourable H.Glover, Judge.

1935 MRS. A. CHOPPY & ORS. v. A. CHOPPY & ANOR.

The Honourable R. Neerunjun reads the judgment of the Court (R. Neerunjun, C.J. & H. Glover, J.) allowing the appeal.

The judgment of the Supreme Court of Seychelles is reversed and the action entered by the Respondents is dismissed with costs including the costs of this appeal.

(sd) A. Leong Son
for Master and Registrar.

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J U D G M E N T

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Judgment 7th September 1960

IN THE SUPREME COURT OF MAURITIS

B E T W E E N:

MRS.MERICIA ANGELA CHOPPY & ORS. — Appellants

- and -

ANTOINE CHOPPY & ANOR. — Respondents

JUDGMENT

This is an appeal from a judgment of the Supreme Court of Seychelles declaring a marriage void and ordering that the register of the Civil Status be rectified by expunging the act relating to that marriage and the memoranda of legitimation in the birth certificates of the children legitimated by such marriage.

The Statement of Claim, as it originally stood, with the heading "Nature of Action: Nullity of Marriage", averred (1) that the Respondents Antoine Choppy and Louise Choppy were the brother (frere germain) and the sister (soeur germaine) respectively of Augustin Choppy who died on the 12th November, 1957, after having on the 2nd November, 1957, contracted a marriage in articulo mortis with the first Appellant Mrs.Mericia Angela Bibi, (2) that the natural acknowledged children of Augustin Choppy and Mrs.Mericia Angela Bibi issued of them before the marriage were legitimated by such marriage, and (3) that the act of the Civil Status witnessing the marriage was null and void for the following reasons:

(a) because the conditions necessary for a marriage in "articulo mortis" did not exist;

(b) because the formal requirements of

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the Civil Status Ordinance Chapter 26 were not complied with;

(c) because the said Augustin Choppy, before and at the time of the purported marriage was suffering from mental infirmity;

(d) because at the time of the purported marriage, Augustin Choppy was unable by reason of mental infirmity to know the nature and quality of his purported acceptance of the act of marriage.

The Respondents prayed for a judgment declaring the document witnessing the marriage to be null and void and that it be struck off from the register of the Civil Status with consequential rectifications in the acts of birth of the children who were legitimated.

The statement of claim was subsequently modified, the factual averments remained substantially the same but a specific prayer was added asking that the purported marriage be declared null and void to all intents and purposes. In this connection Mr.Thomas who appeared for the Respondents observed that he realised that the legitimation of the children arose from the marriage, and in order that they should be bastardized it was necessary to obtain first from the court a declaration that the marriage itself was null and void.

The Appellants in defence maintained that the marriage was valid and was not vitiated because of failure to comply with any legal provision or for want of consent on the part of Augustin Choppy. The defence also raised a question of procedure contending that a suit of nullity of marriage could only be entered by way of petition as provided by the Matrimonial Causes Ordinance (Cap.91) and the Rules made thereunder and not by plaint or statement of claim; this contention was rejected by the court, the reasons of judgment remaining unknown as the Judge who tried that issue failed in his undertaking to file them later.

When the case came to be determined on its merits the Appellants made default and the court after hearing evidence delivered judgment in favour of the Respondents in terms of their prayer.

We have set down above the main facts and circumstances of the case in so far as they are relevant for the purposes of this appeal. It is not necessary for us to review any further the proceedings before the Supreme Court of Seychelles in its various stages, except to state that it is clear that there was considerable confusion in the mind of Counsel on both sides as to the law governing marriages and nullity of marriages in Seychelles; this was illustrated by the fact that at one stage of the proceedings all the arguments submitted to the court on a preliminary point were based on provisions of law which had been repealed; to this must be added the difficulty, as will appear later, which arose from the hybrid Anglo-French system caused by the enactment of the Matrimonial Causes Ordinance, (Cap.91) borrowed from the law of the United Kingdom and the sweeping repeal of certain provisions of the civil code without due regard to the implications involved. The confusion was made more confounded by the unfortunate laxity of procedure during the trial of the case.

Mr. Thomas must later have realised that a number of legal propositions submitted by him to the Court of Seychelles were erroneous and he asked us to ignore them and to consider the merits of the case on the pleadings as they stood and to apply the proper law thereto.

The first five grounds of appeal raise the point which was argued before the court below in relation to the question of the proper procedure which should be followed to challenge the validity of a marriage.

Before dealing with the grounds of appeal there are two points of which we may dispose without further ado. The first is the submission by Mr. Thomas that the appeal should not be entertained since the Appellants had made default at the hearing of the merits when

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they should have asked for the reinstatement of the case: they were thus wrong to have instead lodged an appeal. On Mr. Koenig observing that this point should have been raised specifically by way of preliminary objection and within the time limit set by rule 55 of the Mauritius Supreme Court Rules applicable to Seychelles' appeals, Mr. Thomas stated that he did not raise the point as a preliminary objection to defeat this appeal but merely to show that the Appellants had taken unfair advantage of the situation and that this Court should be reluctant to allow this appeal. We agree with Mr. Koenig and desire to add that in the circumstances of this case the submission has no merits.

The second point relates to the averments in the statement of claim that the marriage was void because the conditions for the marriage in articulo mortis did not exist and the formal requirements of the Civil Status Ordinance had not been complied with. Mr. Thomas did not contend that the marriage was void for failure to comply with the provisions of the law regarding its celebration, but he submitted that such failure supported the main averment of the Respondents that there was no valid consent given by Augustin Choppy to his marriage. The real issue therefore relates to a suit for the nullity of a marriage based on the absence of consent of one of the spouses.

Mr. Koenig for the Appellants submitted that the legitimation of the children flowed from the existence of the marriage itself and such legitimation could not lose its effect except by a definite action to pronounce the nullity of the marriage, and further that the procedure relating to a suit for nullity of marriage was governed by the Matrimonial Causes Ordinance, according to which such a suit must be initiated by petition supported by affidavit, and he added that this procedure was a matter of public order in view of the language of the Ordinance and the imperative character of its provisions. He argued that it made no difference that a marriage for want of consent was void, since it was clear from the pleadings that the nullity of marriage was the principal

action and its effect on the legitimation was merely consequential. Mr.Thomas argued that the remedy sought was the bastardization of the children, that it was not really necessary to obtain from the court a decree of nullity of the marriage, all that was required was a mere declaration of its nullity, a pronouncement which the court was entitled to make on the strength of the principles obtaining under English case-law in the matter since the marriage was void ipso jure for want of consent.

The qualifications and conditions necessary for contracting marriage, the oppositions to marriage, the celebration of marriage and nullity of marriage were governed by articles 144 to 193 of the Civil Code with minor modifications. The Civil Status Ordinance (Cap.26) formally repealed articles 144 to 179 but these provisions were substantially reproduced in Sections 41 et seq. of this Ordinance. We take special note of Article 146 of the Civil Code which enacts "Il n'y a pas de mariage lorsqu'il n'y a point de consentement"; and which is reproduced verbatim in Section 42 of the Ordinance which reads: "There is no marriage where there is no consent". The Matrimonial Causes Ordinance, which was borrowed from the Matrimonial Causes Act, 1937, made special provision for matrimonial causes including "nullity of marriage" and repealed the greater part of Chapter IV of the Civil Code (Articles 180-193) which afforded remedies for the avoidance of certain marriages. Nullity of marriage is a matrimonial cause within the meaning of Section 3 of the Matrimonial Causes Ordinance; Section 18 provides that every decree of nullity shall be in the first instance a decree nisi, and Rule 2 of the Matrimonial Causes Rules, 1949, made under the Ordinance lays down that every matrimonial cause shall be commenced by a petition.

The question concerning the proper procedure to be followed was argued before us on the assumption that a marriage contracted without the consent of one of the parties was void ipso jure and also that in such a case the collaterals having an interest to do so could ask for the nullity of such a marriage. We shall therefore in the first instance consider the

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case on these assumptions.

A number of authorities were quoted to us by Mr.Thomas to show that in the case of a marriage which is void ipso jure the nullity of marriage can be declared incidentally by the court in any suit where the question arises, and that it is not necessary to obtain a decree for the pronouncement of its nullity. The most important of these authorities is the case of De Reneville v. De Reneville, 1948 1 All E.R. p.56 in which Lord Green, M.R., observed:

> A void marriage is one that will be regarded by every court in any case in which the existence of the marriage is in issue as never having taken place and can be so treated by both parties to it without the necessity of any decree annulling it;a voidable marriage is one that will be regarded by every court as a valid subsisting marriage until a decree annulling it has been pronounced by a court of competent jurisdiction. In England only the Divorce Court has this jurisdiction. The fact that in both cases the form of the decree is the same cannot alter the fact that the two cases are in this respect quite different. This difference is illustrated by the Marriage Act, 1835, to which I referred a moment ago. Before that Act a marriage within the prohibited degrees could only be got rid of by a decree of an ecclesiastical court. After the Act every court was bound to treat it as never having taken place.

We have reviewed the case-law on this point and have come to the conclusion that where the question of the nullity of a marriage arises incidentally if the marriage is void ipso jure it can be so declared, but where a suit is instituted for the specific object of declaring a marriage null and void, the question of nullity cannot be treated as an incidental matter and the normal procedure must be followed. This principle is clearly stated in the judgment of the court in the case of A. v. B. and another, Probate and Divorce Cases, 1865

to 1869, Vol.I at p.561 in these words:

> The various restrictions on marriage, such as a prior existing marriage, insanity, illegality under the Marriage Acts, illegality under the Royal Marriage Act, and, since Lord Lyndhurst's Act, consanguinity or affinity, all these matters, when they arise incidentally in the temporal courts, have in modern times been there dealt with for the purposes of the suit in which they have arisen. In older times all questions of marriage were relegated to the ecclesiastical authorities. Upon the old plea of ne unques accouple in an action for dower, the validity of the controverted marriage used always to be determined by the bishop's certificate. The gradual declension of spiritual authority in matters temporal has brought it about that all questions as to the intrinsic validity of a marriage, if arising collaterally in a suit instituted for other objects, are determined in any of the temporal courts in which they may chance to arise. Though at the same time a suit for the purpose of obtaining a definite decree declaring a marriage void which should be universally binding, and which should ascertain and determine the status of the parties once for all, has from all time up to the present, been maintainable in the ecclesiastical court or the Divorce Court alone.

In the present case, it is clear from the pleadings that the main purpose of the action is to obtain a judgment decreeing the nullity of the marriage for want of consent of one of the spouses and that the result which the Respondents seek as a remedy, i.e., the removal of the legitimation of the children, is consequent upon a pronouncement by the court that the marriage is null and void and is based on no other ground. This must be so since the legitimation of the children depends exclusively on the existence of a valid marriage in virtue of article 331 of the Civil Code which provides as follows :

> " Les enfants nes hors mariage, autre que ceux nes d'un commerce incestueux ou

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adulterin, pourront etre legitimes par le mariage subsequent de leurs pere et mere, lorsque ceux-ci les auront legalement reconnus avant leur mariage, ou qu'ils les reconnaitront dans l'acte meme de celebration. Il sera fait mention de la legitimation en marge de l'acte de naissance de l'enfant legitime."

The provisions of this article were maintained by section 74(1) of the Civil Status Ordinance which enjoins that "legitimation shall take place as provided in articles 331 and following of the Civil Code as amended by the Filiation Ordinance."

We read from Encyclopedie Dalloz, Droit Civil, Vo. Mariage, note 1015:

" Les enfants qui ont ete legitimes par le mariage annule perdent le benefice de la legitimation; certes l'article 331 du code civil dit que les enfants naturels reconnus sont legitimes par le mariage subsequent de leurs auteurs, mais la legitimation disparait avec sa cause." (Planiol et Ripert, t.2, par Rouast, no.310; Beudant at Lerebours - Pigeonniere, t.2., par Batiffol, no.628). Il n'y a d'ailleurs pas lieu de distinguer suivant que les enfants ont ete legitimes par le mariage lui-meme ou par une decision de justice posterieure."

Also from Planiol et Ripert, Droit Civil, Vol. II, p.818 paragraph 959:

" Contestation de la legitimation - Les legitimations de complaisance sont frequentes, beaucoup d'hommes se croyant obliges de legitimer l'enfant naturel de la femme epousee, encore qu'ils soient certains de ne pas en etre l'auteur; c'est une forme d'adoption realisee en fraude de la loi. Mais il est toujours possible d'attaquer une legitimation fictive, et les contestations de legitimation ne sont pas rares, soit qu'on attaque le mariage qui l'a produite, soit qu'on s'en prenne aux reconnaissances. Au premier

cas l'action est une action en nullite de mariage qui est exercee suivant les regles exposees au chapitre des nullites de mariage."

Mr. Thomas suggested to us in the course of his argument that, unless the Respondents instituted proceedings to remove the act of marriage, meaning the document registering the marriage, from the Civil Status register, and also to have the entries regarding the legitimation removed by way of principal action, they could not secure the remedy afforded by article 339 of the Civil Code which provides that:

" Toute reconnaissance de la part du pere ou de la mere, de meme que toute reclamation de la part de l'enfant pourra etre contestee par tous ceux qui y auront interet."

Mr. Thomas had however overlooked the provisions of section 39 of the Matrimonial Causes Ordinance, which was not quoted to us. Subsections 1, 2 and 3 of section 39 provide as follows :

(1) It shall be the duty of the Registrar within eight days after a decree of divorce, nullity, legitimacy, or presumption of death and dissolution of marriage has been pronounced to forward to the Chief Officer of the Civil Status a copy certified by him of such decree.

(2) The decree of divorce or of nullity shall be entered verbatim in a special register of divorce and nullity kept by the Chief Officer of the Civil Status and such entry shall be certified and signed by him as correct.

(3) It shall be the duty of the Chief Officer of the Civil Status to cause a marginal mention of such divorce, nullity and legitimacy, and of the date of the decree thereon to be made upon the act of marriage or act of death of the persons whose marriage has been dissolved or

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declared void or who have been declared legitimate, and in both of the registers in which the marriage or birth has been inscribed."

It is evident therefore that the proper remedy is by way of principal action to secure a judgment of the court decreeing the nullity of the marriage and that if the marriage is declared null and void its registration in the Civil Status register and the legitimation of the children automatically lose their effect.

We must finally refer to Rayden on Divorce, 17th Ed. (at p.67 note 6) where a comment is made on the application of Section 12 (1) of the Matrimonial Causes Act, 1950, which is similar to Section 18 (1) of the Seychelles Matrimonial Ordinance:

> But every decree of nullity even where the marriage is void ipso jure shall in the first instance be a decree nisi, Matrimonial Causes Act, 1950, Section 12 (1).

We have reached the conclusion that this action is to all intents and purposes one for the nullity of a marriage under the Matrimonial Causes Ordinance.

This being so, the question arises whether non compliance with the procedure traced out in the Ordinance is fatal to the action as entered. Mr. Koenig submitted that the enactment regulating the procedure was mandatory and that disobedience to it entailed nullification of the suit. We think that the wording of Rule 2 of the Matrimonial Causes Rules, 1949, which lays down that a matrimonial cause shall be commenced by a petition is mandatory. Hence granting that the Court of Seychelles had jurisdiction to try the subject matter of this action, it could only do it subject to the rules of procedure laid down, namely that the suit should commence by petition. Failure to follow that procedure meant that the Judge could no longer have jurisdiction (Maxwell, Interpretation of Statutes, 10th Ed. p. 380; see also cases cited in note (m)).

While discussing the field of operation of 9 & 10 Vict. c.95 in the case of R. v. Essex County Court Judge (1887) 18 Q.B.D. 704, Lord Esher, M.R., said:

> The ordinary rule of construction therefore applies in these cases, that when the legislature has passed a new statute giving a new remedy, that remedy is the only one which can be pursued.

Lopes, L.J., added:

> That Act gave a new jurisdiction and a new procedure, new forms and new remedies, and the procedure, forms and remedies thus prescribed must, when they have not been altered by subsequent legislation, be strictly complied with.

The above principle was first enunciated in 1761 by Dennison, J., in Stevens v. Evans, 97 E.R. 761:

> It is a rule that upon a new statute which prescribes a particular remedy, no remedy can be taken but the particular remedy prescribed.

and followed in a considerable number of cases listed in English and Empire Digest, Vol.42, Vo. Statutes, paragraphs 1737 et seq.

It was reiterated in very clear language by Lord Halsbury, L.C., in Passmore v. Oswald Twistle U.D.C. 1898 A.C. 387:

> The principle that when a specific remedy is given by a statute it thereby deprives the person who insists upon a remedy of any other form of remedy than that given by the statute is one which is very familiar and runs through the law.

(Vide also Watt v. Kesteren C. Council, 1954 W.L.R. 729).

That in England the question of determining whether a given remedy was an exclusive one should have been the subject of numberless

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decisions is quite understandable because in many cases one finds common law and equitable remedies running parallel to statutory remedies. But in Seychelles the position is altogether different.

The law regarding divorce was to be found in the Mauritius Ordinance No.14 of 1872 (Seychelles Laws of Herchenroder, Vol.I p. 390) Section 7 of which provided that any suit for divorce had to be commenced by way of petition and it was specifically provided that article 881 of the Code of Civil Procedure was repealed in so far as it was inconsistent with the provisions of that section. The procedure was amended by the Mauritius Ordinance No.37 of 1882 (Seychelles Laws, op. cit. p.395) which provided that judgments for divorce should in the first instance be by decree nisi. When the Seychelles Code of Civil Procedure was enacted in 1920 it did not touch the above provisions regarding divorce and the position therefore was that suits for nullity of marriage had to be commenced in the ordinary manner provided by section 28 of the Code. But when the Matrimonial Causes Ordinance was passed in 1949 it repealed the 1872 and 1882 Ordinances and modified the law as to divorce and to a slight extent that of divorce procedure. But it did operate a radical change in so far as the law regarding nullity of marriage was concerned.

Before the passing of the Matrimonial Causes Ordinance, the matter of nullity of marriage was regulated by statute (i.e. the Civil Code, articles 180 - 193) and not by common law and when these articles were repealed and replaced by new substantive law, new forms of procedure were also laid down thereby by necessary implication ensuring the repeal of the forms laid down by Section 28 of the Code of Civil Procedure. It is difficult to escape the conclusion that the new procedure created was exclusive. This is illustrated by the fact that where formerly a judgment of nullity was final in the first instance, as from the passing of the Matrimonial Causes Ordinance the pronouncement of the decree was nisi in the first instance and only absolute after a certain

lapse of time in order to give the Attorney General and such other persons as had the right to do so to intervene and show cause why the decree should not be made absolute. (Sections 16 and 18(2) of the Ordnance). We have thus reached the conclusion that there is in Seychelles no other remedy for pursuing a suit in nullity of marriage than that traced out in the Matrimonial Causes Rules and that such suit must commence by petition.

We shall now consider the merits of the two assumptions on which the case was argued and to which we had referred earlier. On a question put by the Court as to the authority on which he relied, Mr. Thomas stated that the remedy asked for by the Respondents was based on Section 339 of the Civil Code and on the Matrimonial Causes Ordinance, and when asked whether he could mention the specific text which made marriages vitiated for want of consent void ab initio and which gave collaterals a right to impugn such marriages, he referred us in particular to Sections 4 and 15(3) of the Matrimonial Causes Ordinance, and stated that the legislator could not by the repeal of Sections 180 to 193 of the Civil Code have intended to deprive collaterals of a remedy which they possessed before.

Section 4 of the Ordinance reads "Except where hereinafter specifically provided this Ordinance shall be construed according to the principles and rules followed in the High Court of England". This section only relates to interpretation and procedure. It is clear that it cannot be taken to mean that the substantive law relating to the remedies available and the persons entitled thereto should, except where otherwise provided, be the English law. Mr. Thomas had lost sight of the fact that remedies available by the substantive law of England derived not only from Statute Law but also from the Common Law including the residual authority of the Ecclesiastical Courts. (See Latey on Divorce, 14th edn., p.192; Rayden on Divorce (op.cit.), pp 3 to 7, 23 and 45).

Section 14 of the Ordinance lays down a number of grounds for nullity and must be read subject to Section 15(3) which provides that

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nothing in the first mentioned section shall be construed as validating any marriage which is by law void but in respect to which a nullity has not been granted. This proviso no doubt saves all existing grounds of nullity in cases not governed by Section 14 but for which a remedy is available otherwise (See Latey on Divorce (op.cit.) p.213 paragraph 391).

We can consider both questions together, namely, whether there is a remedy to have marriages made without consent declared null and void and if so what is the nature of that remedy, and also whether it is available to collaterals.

Before the enactment of the Matrimonial Causes Ordinance marriages made without consent were principally governed by article 146 of the Civil Code which is reproduced in Section 42 of the Civil Status Ordinance (Cap. 26,) (supra) and by Article 180 which reads as follows:

> " Le mariage qui a ete contracte sans le consentement libre des deux epoux, ou de l'un d'eux, ne peut etre attaque que par les epoux, ou par celui des deux dont le consentement n'a pas ete libre.
>
> Lorsqu'il y a eu erreur dans la personne, le mariage ne peut etre attaque que par celui des deux epoux qui a ete induit en erreur."

The rights of collaterals to impugn such a marriage stemmed from article 184 which reads:

> " Tout mariage contracte en contravention aux dispositions contenues aux articles 144, 147, 161, 162 et 163, peut etre attaque soit par les epoux eux-memes, soit par tous ceux qui y ont interet, soit par le ministere public."

We have already indicated the French origin of a number of provisions relating to capacity to marry and to the celebration of marriage. Except for the minor modifications made by the Matrimonial Causes Ordinance, the institution of marriage in the present state of the law of Seychelles as regards its juridical character and

effects remains essentially French, this is still more manifest by the fact that rights and obligations arising therefrom as laid down in the relevant provisions of the Civil Code remain unimpaired. The juridical character of marriage and the legal nature of the matrimonial bond it creates can therefore be interpreted, subject to any changes made by the Matrimonial Causes Ordinance, according to the principles of French doctrine and case law.

In the first place there is no such concept known under the French system as a marriage void ipso jure. Every marriage duly celebrated is considered to be effective until a decree is pronounced by the court nullifying it.

We read the following from Baudry-Lacantinerie & Houques-Fourcade, Vol. 3, p. 319, paragraph 1697:

> " Conformement a la regle generale exprimee par l'ancien adage, 'nullities de plein droit n'ont lieu', et ainsi que le montrent la rubrique meme du chapitre IV de notre titre, 'Des demandes en nullite de mariage', comme tous les textes qui le composent, l'annulation d'un mariage n'a jamais lieu de plein droit et en vertu des seules dispositions de la loi: elle doit etre prononcee par la justice, sur l'action portee ou l'exception soulevee devant elle. Plus encore dans notre maniere qu'en aucune autre, il importe que la justice seule soit appelee a constater l'absence des elements dont le defaut compromet la validite du mariage. Jusque-la donc il existe et produit tous ses effets."

(See also Planiol & Ripert, Droit Civil, Vol.2, p.239 paragraph 307; D.R.P. Vo. Mariage Nos. 482 et seq.)

Certain authors expressed the doctrine of a "mariage inexistant" to support the view that it could be treated as such, requiring no decree for its avoidance and could be declared null and void incidentally in a suit where the issue arises. Demolombe, for example, mentions the case of a marriage celebrated by a priest

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without the authority given to a civil status officer to perform a valid civil marriage (Demolombe, Du Mariage, Vol. 1, pp.378-379). The fallacy of this doctrine is demonstrated by other authors who observe that cases of nullity of marriage really arise not when there has been a sham celebration or no marriage at all but where there has been a marriage actually celebrated and which has a de facto existence. (See Beudant, Cours de Droit Civil Francais, Vol. 2, p. 487 paragraph 606).

Be that as it may, in so far as marriages which have been properly celebrated French case law refused for paramount social considerations to accept the doctrine of "mariage inexistant" as is clear from the following notes:

Encyclopedie Dalloz, Droit Civil, Vo. Mariage -

" Note 982 - La theorie des mariages inexistants a ete l'objet de graves critiques depuis la fin du XIX siecle; la doctrine contemporaine lui est hostile. En effet, la construction de la theorie des mariages inexistants est due a la necessite de corriger le principe: "Pas de nullite sans texte"; il y a des cas ou la loi ne prevoit pas la nullite et ou l'on ne peut admettre que le mariage produise ses effets. Mais, du moment que l'on rejette le principe, la categorie des mariages inexistants s'avere inutile. L'inutilite de cette categorie ressort, d'ailleurs, du fait qu'en pratique, il n'y a pas de difference entre la nullite absolue et l'inexistence. L'inexistence suppose une situation ou aucune apparence d'un mariage veritable n'a pu etre juridiquement cree, de telle sorte qu'il n'y a pas besoin d'intenter une action en justice, les pretendus conjoints etant de plano traites comme s'ils n'etaient pas maries. Or, en pratique, une action en justice s'avere necessaire toutes les fois qu'un acte figure sur les registres de l'etat civil."

"Note 983 - Aussi bien la jurisprudence

n'a-t-elle jamais admis formellement la theorie des mariages inexistants."

(See also Planiol et Ripert, Vol. 2, p.251, paragraph 322; D.R.P. Vo. Mariage, No.482).

The reason why the legislator in France maintained to a large extent the severity of the canon law and limited the right to question the validity of a marriage is stated in the case of Desmoulin v. Veuve Desmoulin, D.P. 1888. 1. at p.163 by the Court of Bordeaux:

" Et, attendu que l'art. 180 a fait de l'action en nullite, basee sur un defaut ou sur un vice de consentement, une action exclusivement personnelle aux deux epoux; que les collateraux ne sont recevables a attaquer le mariage que dans les cas prevus aux art. 184 et 191; que l'art. 146 n' etant pas compris dans cette nomemclature, il en resulte que les collateraux n'ont pas droit d'attaquer le mariage pour cause de demence, pas plus que pour cause de violence ou d'erreur; que cette exclusion des collateraux se justifie par les plus serieuses considerations; qu'on ne devrait pas livrer a d'autres qu'aux epoux la discussion d'un consentement qui a pour mobile les sentiments les plus mysterieux et les plus sacres de la conscience et du coeur; que, le mariage ayant pour les epoux des suites ineffacables et la naissance des enfants y ajoutant des effets irrevocables, l'annulation a toujours ete consideree comme une funeste atteinte a la famille et a la societe; que la defaveur qui s'attache a l'intervention des collateraux est traditionelle dans le droit, et que la preoccupation constante du legislateur en cette matiere a ete de l'ecarter ou de la restreindre, en faisant prevaloir l'interet social, qui reclame le maintien du mariage, sur les interets prives qui peuvent s'attacher a son annulation."

(See also Baudry-Lacantinerie & Houques-Fourcade, Vol.3, p.324).

There is no provision in the Civil Code which

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lays down in so many words that a marriage made without the consent of one of the spouses is null and void, (entache de nullite absolue). Article 180 was originally meant to cover cases where the consent was given through "violence" or "erreur" and this article does not refer to the absolute absence of consent. It has been held however on the strength of the proposition that one aspect of marriage is contractual in character and that the absence of consent would, in application of articles 1008 and 1009 of the Civil Code, make the contract invalid, that article 146 could be brought within the ambit of the operation of article 180 of the Civil Code. (See D.J.G. vo. Mariage, no.53; D.R.P. Vo. Mariage, nos.14 et seq; Encyclopedie Dalloz Droit Civil, Vo. Mariage, nos.26, 27, 96).

We have now to examine the nature of a nullity of marriage based on absence of consent and of the remedy available to collaterals. Nullities of marriages under the French system fall into two classes: "nullite absolue" and "nullite relative". The importance of the distinction is that collaterals have a remedy only in cases of "nullite absolue". The right of collaterals to impugn the validity of a marriage was conferred by article 184 of the Civil Code which gives a list of causes of "nullite absolue" and it must be observed that the nullite arising from the breach of article 146 is not therein included. In France the law was amended in 1933 (loi du 19 fev. 1933) to insert article 146 in the list of causes of nullity mentioned by article 180 thus making the nullity for want of consent "absolue" instead of "relative". (See Encyclopedie Dalloz, Vo. Mariage, nos.886 and 983).

Even therefore if we take an extreme case of mental infirmity equivalent to insanity, the nullity would only be a "nullite relative". This question was fully considered by the Court of Cassation in the case of Desmoulin v. Veuve Desmoulin, (D.P. 1888.1.161) where the Court stated as follows :

" Attendu que l'art. 146 portant "qu'il n'y a pas de mariage, lorsqu'il

n'y a pas de consentement" comprend tout a la fois le cas ou le consentement est le resultat d'une volonte obliteree par la demence, et ceux ou il n'est donne qu'a la suite de violence physiques ou morales, exercees sur les epoux ou l'un d'eux, ou d'une erreur sur la personne avec laquelle l'un des epoux a declare vouloir s'unir; - Que, dans aucune de ces circonstances, le consentement ne peut etre repute l'expression d'une volonte certaine et libre, capable d'engendrer un engagement formant un lien legal entre les parties; - Attendu que, pour assurer l'execution des prescriptions edictees au chapitre 1er, le legislateur a formellement designe, dans le chapitre 4 qui trace les regles propres aux demandes en nullite de mariage, les personnes qui pourraient attaquer les mariages contractes en contravention aux dites prescriptions; Qu'ainsi les articles 180, 181, 182 et 183 determinent les qualites requises des demandeurs, les conditions et les delais de l'action en nullite, pour les cas ou le mariage n'a pas ete cele bre avec le consentement valable et libre des epoux, aussi bien que pour ceux ou les ascendants et le conseil de famille n'ont point donne leur consentement alors qu'il etait necessaire; Que les collateraux ne sont mentionnes dans aucun de ces articles; Attendu que l'art. 184 concernant la demande en nullite du mariage contracte au mepris des prohibitions touchant a l'age des epoux, a l'existence d'un premier mariage et aux liens de parente ou d'alliance, reconnait, au contraire, a tous ceux qui y ont interet, et par consequent aux collateraux, ainsi qu'aux epoux et au ministere public, le droit d'attaquer le mariage contracte en violation des art.144, 147, 161, 162 et 163 c. civ.; Que l'art. 146 ne figure point au nombre des articles rappeles au dit art. 184; Que les collateraux ne sont donc, dans l'etat actuel de notre legislation, recevables a attaquer le mariage de leurs parents que dans les cas expressement enonces au meme article, et que, quelle que soit la nature de l'empechement au mariage formule par les termes generaux de l'art. 184, attribuer qualite

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aux collateraux pour demander la nullite d'un mariage contracte par un epoux en etat de demence, pas plus qu'on ne pourrait leur reconnaitre le droit de se pourvoir en annulation d'un mariage contracte sous l'empire de l'erreur ou de la violence ou sans le consentement des pere et mere et autres ascendants."

Thus, even if article 184 of the Civil Code had remained on the statute book of Seychelles, collaterals would still not have a remedy because want of consent would cause a "nullite relative" and not a "nullite absolue". Furthermore a "nullite absolus" does not render a marriage void ipso jure, meaning that it has no effect whatsoever.

Before the repeal of article 184 of the Civil Code in Seychelles collaterals were not entitled to sue for the nullity of marriages vitiated for want of consent and there is nothing in the Matrimonial Causes Ordinance to indicate that the Ordinance has given them such a remedy. Mr.Thomas has mentioned to us the principles of English Law by which a marriage without consent could be questioned by any person having an interest to do so and Mr. Koenig conceded that this might be the position, but we find no text on the Seychelles Statute book which introduces either expressly or impliedly by direct legislation or through legislation by reference to the common law of England and the residual powers of the Ecclesiastical Courts to afford substantive remedies in respect of nullity of marriage other than those provided by the statute law of Seychelles.

The position therefore is that the saving in section 15(3) of the Matrimonial Causes Ordinance does not help the Respondents since collaterals had no remedy before it was enacted and have no remedy now.

Mr. Thomas stated that the Respondents did not rely for their remedy on Section 14 of the Matrimonial Causes Ordinance, but since that section makes provision for the case of a nullity of marriage when either party to it was

of unsound mind we might as well consider the procedure by which that provision could be invoked. In virtue of subsection (9) of section 14 "a marriage shall be declared null and void ab initio and to all intents and purposes if either party to the marriage was at the time of the marriage of unsound mind or was a mental patient under any law relating to unsoundess of mind or a mental defective or subject to recurrent fits of insanity or epilepsy". This provision was borrowed from section 7(1) of the United Kingdom Matrimonial Causes Act, 1937 (now section 8(1) of the Matrimonial Causes Act, 1950), which introduced in the English Law additional grounds for a decree of nullity in case of voidable marriages. (See Latey on Divorce (op.cit.) p.211 paragraph 386). The expression "unsound mind" must be given a broad interpretation, and it includes in our view a state of mind resulting in a failure to understand the nature of the contract which would thus vitiate the consent.

Mr. Thomas further submitted that section 14 of the Ordinance did not apply to this case as it only made provision for nullity of marriages claimed by one of the spouses. In any case, we are of opinion as stated above that the Matrimonial Causes Ordinance does not give collaterals a remedy.

The opening words of section 14 "a marriage shall be declared null and void ab initio" do not mean that the marriage becomes void ipso jure; it is clear that the grounds of nullity provided by Section 14 are only available by way of the procedure traced under the Rules made thereunder, i.e. by way of petition as provided in Rule 2 of the Matrimonial Causes Rules, 1949, the decree to be in the first instance nisi as provided by section 18 (1) of the Ordinance. The position is the same in English Law.

A further proof that the nullities introduced by Section 14 in spite of its wording only refer to voidable marriages is that save in one case the legitimation of the children born of a marriage is not affected and is saved by Section 15 of the Ordinance, which would not

In the Supreme Court of Mauritius

No.55

Judgment 7th September 1960 continued

be the case if the marriage were void ipso jure having thus in law no existence at all.

In the result we are of opinion that even if the Respondents could, as collaterals, have sought to impugn the marriage under reference they could only have exercised their right by following the procedure prescribed in the Matrimonial Causes Rules, 1949. Failure to do this is fatal to their case.

We have also reached the conclusion that the Respondents are not competent as collaterals to sue as they have done in this case for the nullity of the marriage impugned, so that the Court of Seychelles had no jurisdiction to entertain this action.

In these circumstances there is no need for us to examine the other grounds of appeal.

The judgment of the Supreme Court of Seychelles is accordingly reversed and the action entered by the Respondents is dismissed with costs including the costs of this appeal.

(sd) R. Neerunjun
Chief Justice

(sd) J.G.Harold Glover
Judge

7th September, 1960.

No.56

Praecipe for signing Judgment 14th September 1960

No.56

PRAECIPE FOR SIGNING JUDGMENT

IN THE SUPREME COURT OF THE COLONY OF MAURITIUS & ITS DEPENDENCIES.

In re:

MERICIA ANGELA CHOPPY & ORS. Appellants

v.

ANTOINE CHOPPY & LOUISE CHOPPY Respondents

PRAECIPE

For a signing judgment in the above

matter.

Under all legal reservations.

Dated at Port Louis, this 14th day of September, 1960.

(s) J. Andre Robert
of No.8, George Guibert Street,
Port Louis,
Appellants' Attorney.

REGISTERED AT MAURITIUS ON THE TWENTY SECOND DAY OF SEPTEMBER, ONE THOUSAND NINE HUNDRED AND SIXTY, REG. A.344 NO. 5792 RECEIVED ONE RUPEE.

(sd) F.Nozaic.

In the Supreme Court of Mauritius

No.56

Praecipe for signing Judgment 14th September 1960 continued

No.57

O R D E R

No.57

Order 27th September 1960

RECORD NO.1935

IN THE SUPREME COURT OF MAURITIUS

IN THE MATTER OF:

MRS. A. CHOPPY & ORS. Appellants

v.

A. CHOPPY & ANOR. Respondents

AFTERWARDS ON Monday the 25th, Tuesday the 26th, Wednesday the 27th, Thursday the 28th day of July, 1960, before the Honourable R. Neerunjun, O.B.E. Chief Justice and the Honourable H. Glover, two of Her Majesty's Justices of the Supreme Court of Mauritius come the above-named Appellants and the above named Respondents by their respective attorneys and after hearing J. Koenig of Counsel for the Appellants and E. Thomas (P. Leclezio with him) of Counsel for the Respondents, time is taken to consider.

In the Supreme Court of Mauritius

No.57

Order 27th September 1960 continued

AND ON Wednesday the 7th day of September, 1960, IT IS ORDERED by the Court here that the judgment delivered by the Supreme Court of the colony of Seychelles on the 6th November, 1959, whereby the marriage of Mrs.Mericia Angela Choppy with Augustin Choppy was declared null and void and the acknowledgement and legitimation of Andrea Choppy, Mary Choppy, Benjamin Choppy, Robert Choppy, Michel Choppy, Auguste Choppy, Mad. Doly Choppy, Luce Choppy, Noe Choppy and Harry Choppy, were ordered to be expunged from the Civil Status Registers, with costs, BE and IT IS hereby reversed and the action entered by the Respondents BE and IT IS hereby dismissed with costs including the costs of this appeal amounting to the sum of Rs 2075.31cs.

(sd) A. Stephen
Pro Master & Registrar, S.C.

REGISTERED ON THE 27.9.60; REG. B111, N.8640
(s) F. Nozaic.

In the Privy Council

No.58

Order in Council Granting Special Leave to Appeal in Forma Pauperis to the Appellants 30th May 1963

NO.58

ORDER IN COUNCIL GRANTING SPECIAL LEAVE TO APPEAL IN FORMA PAUPERIS TO THE APPELLANTS

AT THE COURT AT BUCKINGHAM PALACE

The 30th day of May, 1963

PRESENT

THE QUEEN'S MOST EXCELLENT MAJESTY

LORD PRESIDENT — MR. RIPPON

EARL OF DUNDEE — MR. CARR

MR. SECRETARY PROFUMO

WHEREAS there was this day read at the Board a Report from the Judicial Committee of the Privy Council dated the 27th day of May 1963 in the words following viz :-

"WHEREAS by virtue of His late Majesty King Edward the Seventh's Order in Council of the 18th day of October 1909 there was

In the Privy Council

No.58

Order in Council Granting Special Leave to Appeal in Forma Pauperis to the Appellants 30th May 1963 continued

referred unto this Committee a humble Petition of Antoine Choppy and Louise Choppy in the matter of an Appeal from the Supreme Court of Mauritius between the Petitioners and (1) Mericia Angela Bibi (s) (otherwise Choppy) (2) Mercia Angela Bibi (s) here acting in her capacity as legal guardian of the minors: Andrea Bibi Mary Bibi Robert Bibi Michel Bibi and Benjamin Bibi (3) Auguste Bibi acting in his capacity of sub-guardian of the minors: Andrea Bibi Mary Bibi Benjamin Bibi Robert Bibi and Michel Bibi (4) Harry Bibi (5)Mad. Doly Bibi (m) (6) Luce Bibi (m) (7) Noe Bibi and (8) Harry Bibi here acting in his capacity of "Tuteur Ad Hoc" of the minors: Andrea Bibi Robert Bibi Michel Bibi Mary Bibi and Benjamin Bibi Respondents setting forth: that the Petitioners humbly pray for special leave to appeal in forma pauperis to Your Majesty in Council from the Judgment and Order of the Supreme Court of Mauritius dated the 7th day of September 1960 whereby the Appeal of the Respondents from the Judgment and Order of the Supreme Court of Seychelles dated the 6th day of November 1959 was allowed and the action entered by the Petitioners dismissed with costs: that on the 2nd day of November 1957 one Augustin Choppy is purported to have contracted a marriage in articulo mortis with the first Respondent Mrs. Mericia Angela Bibi and to have acknowledged the other Respondents and the infants represented by them as his natural children by the first Respondent in order that they might be legitimated as if they had been born in marriage: that the said Augustin Choppy died on the 12th day of November 1957: that by their Plaint in the Supreme Court of Seychelles the Petitioners who are the brother and sister of the deceased and had until his death been joint owners with the deceased in full ownership of certain properties prayed for a declaration: (a) that the purported marriage of 2nd November 1957 was null and void to all intents and purposes; (b) that the document setting out the said marriage was null and void to all intents and purposes; (c) that the registration of the said document in the special register be struck out; (d) that the purported legitimation of the said children was invalid in law; and (e) that any entry showing such legitimation made by the Civil Status Officer on the childrens Acts of Birth be erased: that by their defence the Respondents set up the validity of the marriage in articulo mortis and denied that the conditions necessary did not exist or that the formal requirements had not been complied with or that the said Augustin Choppy was

In the Privy Council

No.58

Order in Council Granting Special Leave to Appeal in Forma Pauperis to the Appellants 30th May 1963 continued

mentally infirm or did not know the nature and quality of his acceptance of the fact of marriage and set up three pleas in limine litis (1) that the Petitioners had no right of action in law to have the document of the 2nd day of November 1957 declared null and void and therefore the action must be struck out; (2) that the action was against public order and therefore should be struck out; and (3) that the grounds contained in the Statement of Claim are not sufficient to annul a marriage: that the said pleas in limine litis were heard as preliminary points and were held to fail in a Ruling given on the 11th day of November 1958: that there was no Appeal from the said Ruling: that at the hearing on the merits the Defendants made default under section 138 of the Seychelles Code of Civil Procedure did not appear and were not represented: that at the hearing witnesses were called as to the mental and physical state of the deceased at and about the time of the purported marriage and the Court on the 6th November 1959 gave Judgment for the Plaintiffs with costs: that the Respondents appealed to the Supreme Court of Mauritius and that Court on the 7th September 1960 gave Judgment allowing the Appeal and the action entered by the Respondents was dismissed with costs including the costs of the Appeal: And humbly praying Your Majesty in Council to grant the Petitioners special leave to appeal in forma pauperis from the Judgment and Order of the Supreme Court of Mauritius dated the 7th day of September 1960 or for further and other relief:

"THE LORDS OF THE COMMITTEE in obedience to His late Majesty's said Order in Council have taken the humble Petition into consideration and having heard Counsel in support thereof and in opposition thereto Their Lordships do this day agree humbly to report to Your Majesty as their opinion that leave ought to be granted to the Petitioners to enter and prosecute their Appeal in forma pauperis against the Judgment and Order of the Supreme Court of Mauritius dated the 7th day of September 1960:

"And Their Lordships do further report to Your Majesty that the proper officer of the said Supreme Court ought to be directed to transmit to the Registrar of the Privy Council without delay an authenticated copy under seal of the Record proper to be laid before Your Majesty on the hearing of the Appeal."

In the Privy Council

No.58

Order in Council Granting Special Leave to Appeal in Forma Pauperis to the Appellants 30th May 1963 continued

HER MAJESTY having taken the said Report into consideration was pleased by and with the advice of Her Privy Council to approve thereof and to order as it is hereby ordered that the same be punctually observed obeyed and carried into execution.

Whereof the Governor and Commander-in-Chief or Officer administering the Government of the Colony of Seychelles for the time being and all other persons whom it may concern are to take notice and govern themselves accordingly.

W. G. AGNEW

NO.59

ORDER IN COUNCIL GRANTING SPECIAL LEAVE TO DEFEND IN FORMA PAUPERIS TO THE RESPONDENTS

No.59

Order in Council Granting Special Leave to Defend in Forma Pauperis to the Respondents 26th March 1964

AT THE COURT AT BUCKINGHAM PALACE

The 26th day of March,1964

PRESENT

THE QUEEN'S MOST EXCELLENT MAJESTY

LORD PRESIDENT	MR.SECRETARY THORNEYCROFT
EARL MOUNTBATTEN OF BURMA	MR. AMERY
VISCOUNT BLAKENHAM	SIR JOHN HOBSON

WHEREAS there was this day read at the Board a Report from the Judicial Committee of the Privy Council dated the 9th day of March

In the Privy Council

No.59

Order in Council Granting Special Leave to Defend in Forma Pauperis to the Respondents 26th March 1964 continued

1964 in the words following viz:-

"WHEREAS by virtue of His late Majesty King Edward the Seventh's Order in Council of the 18th day of October 1909 there was referred unto this Committee a humble Petition of (1) Mericia Angela Bibi(s) otherwise Choppy (2) Mericia Angela Bibi (s) (here acting in her capacity as legal guardian of the minors Andrea Bibi Mary Bibi Robert Bibi Michel Bibi and Benjamin Bibi (3) Auguste Bibi (acting in his capacity of sub-guardian of the minors Andrea Bibi Mary Bibi Benjamin Bibi Robert Bibi and Michel Bibi) (4) Harry Bibi (5) Mad. Doly Bibi (m) (6) Luce Bibi (m) (7) Noe Bibi and (8) Harry Bibi (here acting in his capacity of "Tuteur ad hoc" of the minors Andrea Bibi Robert Bibi Michel Bibi Mary Bibi and Benjamin Bibi) in the matter of an Appeal from the Supreme Court of Mauritius between Antoine Choppy and Louise Choppy (Appellants) and the Petitioners (Respondents) (Privy Council Appeal No.25 of 1963) setting forth that the Appellants obtained leave to appeal in forma pauperis to Your Majesty in Council from a Judgment of the Supreme Court of Mauritius dated the 7th September 1960: that the Record in the Appeal has been received by the Registrar of the Privy Council and is numbered No.25 of 1963 as aforesaid: that the Petitioners desire to contest the Appeal in forma pauperis and lodge herewith in the Registry of the Privy Council affidavits stating that each of them is not worth more than £100 in the world excepting wearing apparel and interest in this Appeal: And humbly praying Your Majesty in Council to order that they may be permitted to contest the said Appeal in forma pauperis:

"THE LORDS OF THE COMMITTEE in obedience to His late Majesty's said Order in Council have taken the humble Petition into consideration and the

Solicitors for the Respondents (Appellants) having signified in writing their consent to the prayer thereof Their Lordships do this day agree humbly to report to Your Majesty as their opinion that leave ought to be granted to the Petitioners to contest Privy Council Appeal No.25 of 1963 in forma pauperis."

HER MAJESTY having taken the said Report into consideration was pleased by and with the advice of Her Privy Council to approve thereof and to order as it is hereby ordered that the same be punctually observed obeyed and carried into execution.

Whereof the Governor and Commander-in-Chief or Officer administering the Government of the Colony of Seychelles for the time being and all other persons whom it may concern are to take notice and govern themselves accordingly.

W. G. AGNEW

Exhibits

Appendix "8"

Copy of Certificate of Marriage in Articulo Mortis of Augustin Choppy and Mericia Bibi.

2nd November 1957.

APPENDIX "8"

COPY OF CERTIFICATE OF MARRIAGE IN ARTICULO MORTIS OF AUGUSTIN CHOPPY AND MERICIA BIBI

COLONY OF SEYCHELLES, CENTRAL DISTRICT

1957

Act of Marriage "in Articulo Mortis"

(THIS ACT MAY BE FILLED UP EITHER IN ENGLISH OR IN FRENCH) - (ON POURRA REMPLIT CET ACTE SOIT EN ANGLAIS EN FRANCAIS)

1 No.	2 Date and place of Marriage	3 Names and Surnames of Parties	4 Age and Place of Birth	5 Condition	6 Names and Surnames of Parents or Guardians whose consent is required, with Rank or Profession and Residence.	7 Names and Surnames of Witnesses and Relatives present with their rank or Profession and Residence.	8 Religious Denomination of the Parties	9 Children born from intercourse before marriage	10 Marginal Entries
No.	Date et lieu du marriage	Noms at Prenoms des Conjoints	Age et lieu de Naisance	Condition	Noms et Prenoms des Peres, Meres, ou Tuteurs, dont le consentement est requis, avec leur qualite ou profession et Domicile.	Noms et Prenoms des Temoins et des Parents, avec leur Qualite ou Profession et Domicile	Denomination religieuse des Conjoints	Enfantes nes de la liaison des Conjoints avant le Mariage	Notes Marginales
	Victoria rue royale	Augustin Octave Choppy	72 ans	Labour-eur		Mme Wesley Payet La Digue Mme Benjamin Payet La Digue	Catholiques	Harry Bibi Doly Bibi Luce Bibi Noe Bibi	
2	2-11-57	Mericia Angela Bibi	52 -	coutu-riere		M Noe Bibi Charpentier La Digue Mme Vve - Aurelius Uranie Victoria		Auguste Bibi Andrea Bibi Mary Bibi Benjamin Bibi Robert Bibi Nicole Bibi	

Married by me after the said ..... has solemnly declared to me that ..... verily believes ..... is in ARTICULO MORTIS, after the said contracting parties have declared to me, in the presence of the undersigned Witnesses and Relatives, that they are willing to take each other for Husband and Wife, with the consent of ..... and that from their intercourse have been born before their Marriage the Children hereinbefore mentioned, whom they acknowledge as their Children, in order that may be legitimated as if they had been born in Marriage; and I accordingly pronounce that they are united in Marriage, and that the aforesaid Parties, Witnesses, and Relatives, after I have read over to them the Present Act, have signed or marked it with me.

Maries par moi P. Maurice apres que la dite Augustin Choppy m'ait declare solennellement qu'il se considere veritablement in ARTICULO MORTIS, apres que les dites parties contractantes m'aient declare, en presence des temoins et parents, soussignes, qu'ils consentent a se prendre respectivement pour mari et femme, avec le consentement de Mericia Bibi et que de leur liaison sont nes avant leur mariage les enfants ci-dessus nommes qu'ils reconnaissent pour leurs enfants, afin qu'ils soient legitimes comme s'ils etaient nes en mariage; et je prononce en consequence qu'ils sont unis par mariage et les parties, temoins et parents sus-dits, a dits, apres lecture a eux par moi faite du present Acte, y ont appose leur signatures ou leur croix.

In the presence of us — Signature or Marks of Witnesses and of Parents, Guardians, and other Persons whose consent is required

X Aurelius Uranie
(sd) Mme Benjamin Payet
(sd) Noe Bibi
(sd) Mme Wesly Payet

Signature or Marks of the Parties married — X Augustin Choppy

Signatures ou Croix des Maries — (sd) Mericia Bibi

En presence de nous — Signature ou Croix des Temoins Pere, Mere Tuteur ou autres personnes dont le consentement est requis

Certified a true extract
(sd) M. Confait
Officer Civil Status

IN THE PRIVY COUNCIL

No. 25 of 1963

ON APPEAL FROM THE SUPREME COURT
OF MAURITIUS

B E T W E E N :

ANTOINE CHOPPY and
LOUISE CHOPPY — Appellants

- and -

1. MERICIA ANGELA BIBI (s) otherwise Choppy
2. MERICIA ANGELA BIBI (s) (here acting in her capacity as legal guardian of the minors ANDREA BIBI MARY BIBI ROBERT BIBI MICHEL BIBI and BENJAMIN BIBI
3. AUGUSTE BIBI acting in his capacity of sub-guardian of the minors ANDREA BIBI MARY BIBI BENJAMIN BIBI ROBERT BIBI and MICHEL BIBI
4. HARRY BIBI
5. MAD. DOLY BIBI (m)
6. LUCE BIBI (m)
7. NOE BIBI
8. HARRY BIBI here acting in his capacity of "TUTEUR AD HOC" of the minors ANDREA BIBI ROBERT BIBI MICHEL BIBI MARY BIBI and BENJAMIN BIBI — Respondents

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RECORD OF PROCEEDINGS

T.L. WILSON & CO.,
6, Westminster Palace Gardens,
London, S.W.1.
Solicitors for the Appellants.

HY.S.L. POLAK & CO.,
46, Museum Street,
London, W.C.1.
Solicitors for Respondents Nos.1 2,4,5,6,7 and 8.

MATTHEW MORRIS,
46, Museum Street,
London, W.C.1.
Solicitors for Respondent No.3.