

30,1951

No. 46 of 1950.

# In the Privy Council.

UNIVERSITY OF LONDON
-8 OCT 1956
INSTITUTE OF ADVANCED LEGAL STUDIES

**ON APPEAL**  
FROM THE SUPREME COURT OF CYPRUS.

BETWEEN

44361

10 THRASYVOULOS IOANNOU of Kakopetria,  
personally and as representing The Proprietors  
of the Irrigation Division of Kakopetria,  
PHILOTHEOS STAVROU of Troodos,  
HARALAMBOS VIOLARIS of Kakopetria,  
IOANNIS VASSILIOU of Kakopetria,  
HERODOTOS KAZANOS of Kakopetria, and  
CHRYSTALLOU HARALAMBOUS of Kakopetria  
(Defendants) *Appellants*

AND

20 PAPA CHRISTOFOROS DEMETRIOU,  
TOFIS PAPA GEORGHIOU,  
CHRISTODOULOS HJI YIANNI,  
EMILIOS N. KAMENOS,  
MEHMED RAIF HADJI MULLA ALI,  
APHRODITI GEORGHIOU,  
CHARALAMBOS I. EFTHYMIU,  
NEOFYTOS KAROLIDES,  
PERIKLIS DEMETRIOU,  
NEOFYTOS PAPA GEORGHIOU,  
MARITSA NEOFYTOU,  
CHRISTOS MICHAELIDES,  
PAPA GEORGHIOS TOFI,  
CHRISTOS CONSTANTI,  
30 HARICLIS PAPA CHRISTOFOROU,  
YIANNIS G. KOUSPOU,  
MEHMED TEWFIK MOUSTAFA,  
ILARIOS IOANNOU,  
IOANNIS ARGHYROU,  
NEOKLIS PAVLOU,  
THEOCHARIS KARAOLIDES,  
A. KARAOLIDES, minor, through his brother  
guardian and next friend Neofytos Karaolides,  
40 MICHAEL ANASTASI,  
NEOFYTOS IOANNOU,  
MICHAEL SERAPHIM,  
MARITSA HADJI YIANNI,  
ELENI THEOCHAROUS,  
CHARAL K. CHARALAMBIDES,

ANDRONIKI KYRIACOU, ELPINIKI CHRISTOFOROU, MARITSA LOIZOU, SOFIA KYRIACOU, FEVRONIA LOIZOU, KATINA KYRIACOU, ISMINI HIMONA, THEODOROS LOUCA, ELENI PAVLOU, CHAR. ARGHYROU,	10
FROSSA N. KAMENOU, CHRISTOD. PAVLOU, CHAR. M. KALLOURI, PAVLOS M. KALLOURI, IOANNIS ANASTASI, ANTONIETTA PAVLOU, YIANNIS KLEANTH DEMETRI, ASINETTA GEORGHIOU, THEODOSIS CHARALMMBOUS, POLYKARPOS CH. KARAOLIDES,	20
ATHINA NEOKLEOUS, MICHAEL LAMBI, ATHINA HADJI NICOLA, PHINIKOU MICHAEL, GEORGHIOS HJI DHAVID, CLEODNORA CHRISTODOULOU, MEROPI HADJI YIANNI, HADJI HARALAMBOS KOURIDES, HADJI PARASKEVOU K. KYRILLOU, EFROSYNI CHRISTODOULOU,	30
MARIKOU LAMBI, MICHAEL Y. KALLOURI, CONSTANTIS SARAFIS, GEORGHIOS DEMETRI, LOIZOS Y. ELIOTI, AGATHI CH. KOURTELLI, MARIKOU PAVLOU, ELLI M. KOLESIDOU, ZOE IRODANOUS, CHARAL. G. KALLOURI,	40
YANNAKIS KOURTELLIS, MICHAEL PAVLOU, KYRIACOS KYRIAKIDES, ELIAS ILARION, ATHENA MICHAEL, GEORGHIOS LOUCA, YANNI PELEKANOS, IFIGHENIA KARAOLIDOU, YANNIS M. KALLOURIS, MEHMED ALI SOULEMAN, PINELOPI L. SERGHIDOU, THEODORA KOURTELLI,	50

DOROTHEA KYRIAKIDOU,  
 ANTIGONI H. ELIADOU,  
 AGATHI IOANNOU,  
 NICOLAS P. SAVVIDES,  
 SALIH NAIM,  
 KLEONIKI MICHAEL,  
 CHARALAMBOS PAVLOU,  
 LOUCAS PAVLOU,  
 OSMAN TALAT of Lefka for Petra Mosque,  
 ANNA IACOVOU,  
 10 IOANNIS K. MYRIANTHOUSIS,  
 ANASTASSIS LEVENTIS,  
 FROSA N. KAMENOU,  
 RENOS N. KAMENOS,  
 DOROS N. KAMENOS,  
 DIRANDI N. KAMENOU,  
 NEDHI KAMENOU,  
 ESDMONDI N. KAMENOU,  
 ANDREAS N. KAMENOS, and } Minors through  
 20 CHRISTODOULOS LEVENTIS, all of Petra } their mother  
 (Plaintiffs) } guardian and  
 } next friend  
 } Frosso N.  
 } Kamenou of Petra  
 Respondents.

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## Case for the Appellants

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RECORD.

1. This is an appeal, by leave of the Supreme Court of Cyprus, from the judgment of the said Supreme Court, dated the 6th April 1950, whereby the judgment of the District Court of Nicosia, dated the 6th November 1948, was affirmed with minor variation. By the said judgments the Respondents were granted an injunction restraining the Appellants from alleged unlawful interference with the water rights of the Respondents. The main submission of the Appellants in this appeal is that the judgment of the Supreme Court, as of the District Court, whereby it was held that the Respondents had established certain rights by ancient user, was based upon reliance on certain documents which were inadmissible in evidence.

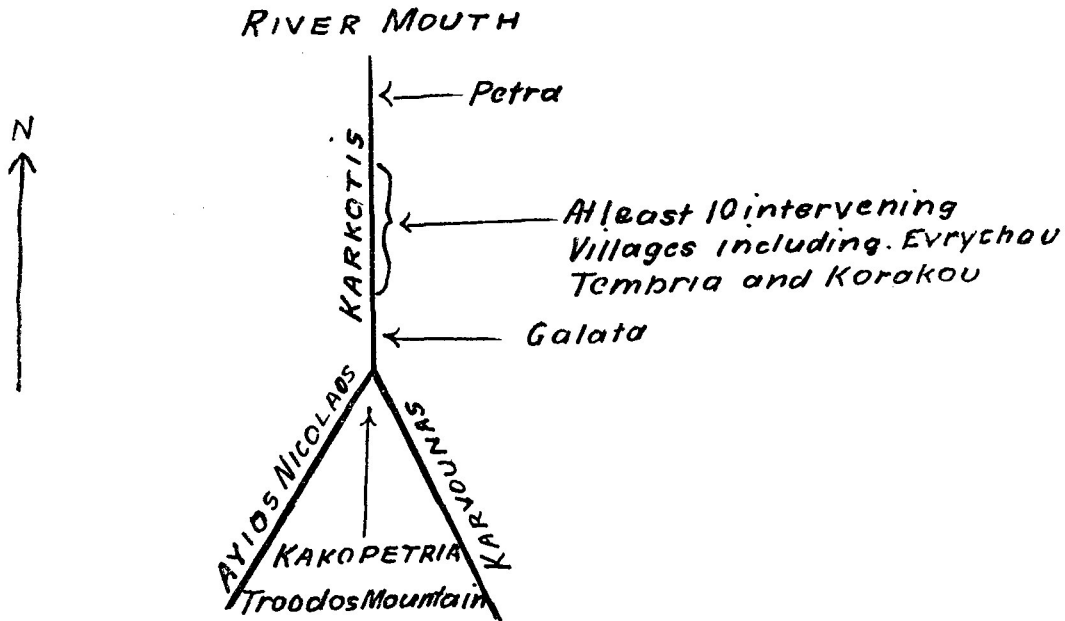
p. 258, ll. 12-22.  
 pp. 248-253.  
 pp. 119-127.

2. The Appellants are inhabitants of the village of Kakopetria in the North of Cyprus, in the foothills of the mountain, or mountain range, of Troodos. The Respondents are inhabitants of the village of Petra, which lies north of Kakopetria, towards the sea. The two villages are some 12 miles apart as the crow flies. At a spot which is described in the evidence as the old village of Kakopetria there is a confluence of two rivers, one known as Ayios Nicolaos and the other as Karvounas, flowing from sources in Troodos. The modern village of Kakopetria, or at any rate all the irrigable land reckoned as belonging thereto, lies upstream of this confluence, and is in fact the only village so situated. Below Kakopetria the river flowing north from the confluence is known as Karkotis. It was one of the issues in this case in the Courts below whether the name "Karkotis" did or did not also apply to one or both of the

p. 11, l. 17.  
 p. 57, l. 37.

confluent rivers above Kakopetria—that is, the rivers described as Ayios Nicolaos and Karvounas and, possibly, also their tributaries. For the purposes of this Case, and for sake of clarity, the name Karkotis will be confined to the river below the confluence in Kakopetria, and the two rivers above Kakopetria will be called by their individual names. The Karkotis, then, below Kakopetria flows through or close to at least eleven other villages before it reaches Petra. The first of these villages downstream from the Kakopetria confluence is Galata and further downstream there are the villages (among others) of Evrychou, Tembria and Korakou. Beyond Petra the river flows into the sea at Morfou Bay, some 4 miles 10 further north.

3. The situation above described can be represented diagrammatically as an inverted letter "Y," viz. :—



4. All the villages below Galata draw their water supply for irrigation from the Karkotis by means of various dams, sluices and channels by which the river water can be diverted to the land where it is required for irrigation. The village of Petra, according to the Statement of Claim in this action, relies on four such dams located in or near the villages of Evrychou, Tembria and Korakou; but their precise situation does not appear to be material, nor is it necessary to mention any other dams in the Karkotis river. In the Ayios Nicolaos river, or a tributary thereof, there are four dams whose names, working upstream from the confluence, are Vassiliko, Kapathokas, Frantziko and Ayios Nicolaos. The first two of these serve the village of Galata and the Kakopetria villagers claim no rights in them. The dams of Frantziko and Ayios Nicolaos, however, belong exclusively to Kakopetria. So, also, do the only dams in the Karvounas river. The names of these, working upstream, are Apliki and Karidhi. (The latter name appears to cover two dams which lie close together but which were generally treated in the evidence as one.)

p. 11, ll. 19, 20.

p. 11, ll. 19-21.

p. 133, ll. 28-30.

p. 5, ll. 20-26.

p. 25, ll. 15-19.

Exhibit A (separate document).

p. 59, ll. 12, 13.

Exhibit A (separate document).



5. It would appear that, at any rate in normal summers, the water flowing into the Karkotis river is adequate for all requirements. It was suggested, however, that in dry summers the flow is inadequate and that those who depend for their water supply on drawing from the lower reaches might find themselves in difficulties. It is said that the summer of 1941 was exceptionally dry, and it was in May of that year that the dispute arose which has resulted in the present Appeal. The actual scene of the dispute was the Frantziko dam in the Ayios Nicolaos river. On the 27th and 28th May 1941 the Appellants insisted on diverting the river water (or part of it) from that dam into the Kakopetria irrigation channels, against the protests of the Respondents' watermen who were present at the spot for the purpose of making sure that the whole of the water of the river was permitted to flow down to the Karkotis so as ultimately to reach the dams at Evrychou, Korakou and Tembria. Briefly, the Respondents, the inhabitants of Petra, contend that by ancient user they are entitled to have for their own use the full natural flow of the water of Karkotis, including the full natural flow of the upper rivers, Ayios Nicolaos and Karvounas, between certain times on certain days of the week; whereas the Appellants, the inhabitants of Kakopetria, contend that the Respondents have no such right of ancient user, but that they, the Appellants, have by ancient and uninterrupted user, the right to take from certain dams and sluices in the rivers Ayios Nicolaos and Karvounas, above their confluence, as much water as they require for the irrigation of the small area of irrigable land belonging to the village of Kakopetria. The actual area of Kakopetria's irrigable land is about 300 donums only. (A donum is approximately one-third of an acre.) No evidence was given of the irrigable area of Petra, but it appears that it was much greater.

6. The Writ in this action was issued on the 26th September 1941. It was not until the 16th October 1943 that the Statement of Claim was delivered. By their Writ and Statement of Claim the Respondents claimed that "by virtue of title deeds, Imperial firman, Ilams of the Sheri Court, the waters of the rivers Karvounas and Ayios Nicolaos and their continuation the river Karkotis belongs to the Plaintiffs." No evidence, oral or documentary, was given at the trial to justify this assertion, and it may be disregarded. The Respondents further, or alternatively, claimed that they "are entitled to take and/or irrigate from, and have actually and continually been taking and irrigating, since time immemorial from the water of the said rivers every Saturday, Sunday, Tuesday and Wednesday of every week from the afternoon of the said days from the time when the length of the shadow of a standing man at the dam and/or locality 'Sanidi-tis-Evrychous' at Evrychou is 7 feet or at the dam and/or locality 'Paliomilos' at Tembria 5 feet, and/or at the dam and/or locality 'Vraktos' at Tembria 6 feet and/or at the dam and/or locality 'Sanidi Korakous' at Korakou 7 feet to the rising of the Pleiads from the beginning of May to the 28th August and to the rising of Orion from the 28th August to the beginning of May each year."

7. Paragraph 7 of the Statement of Claim recited the incidents of the 27th and 28th May 1941 above mentioned (which, in substance, were admitted in the Defence) but the claim of the Respondents was not confined to the Frantziko dam. By paragraph 10 of the Statement of

Claim they appeared to allege (and it was certainly part of the case which they sought to prove at the trial) that the Appellants were not entitled to take water from any part of the Ayios Nicolaos or Karvounas rivers except at night-time "from the rising of Pleiad from the beginning of May to the 28th August and from the rising of Orion during the other period of each year to sunrise" and further that on Tuesdays the Appellants were not entitled to take water at all. On this basis the Appellants' diversion of the water at the Frantziko dam on the 27th and 28th May 1941 was alleged to be unlawful.

8. The Respondents further alleged in paragraph 9 of the Statement of Claim that "Since the 27th May 1941, the Plaintiffs have not taken a single drop of water of the rivers 'Karvouna,' 'Ayios Nicolaos' and 'Karkotis' through the dams 'Ayios Nicolaos' 'Frantziko' 'Karidia' and 'Apliki,' and their gardens, trees and fields owing to non-irrigation have been irreparably damaged and/or practically destroyed"; and, in addition to an injunction, they claimed a minimum of £700 damages. However, no damage was either particularised or proved, and this claim was therefore disregarded in both Courts below.

9. By their Defence the Appellants denied that there was any such limitation on the hours or days of their taking water as alleged by the Respondents. On the contrary, they alleged that: "From time immemorial and in accordance with the law, the owners of land situate within the boundaries of the village of Kakopetria have the absolute right to take such quantity of water as is proportionate to the area of irrigable land of Kakopetria, in order to irrigate their fields, trees, gardens and to water their animals and for other similar purposes"; and that in fact: "the inhabitants of Kakopetria, including the Defendants, do not make use of more quantity of water than the quantity which is proportionate to the irrigable lands belonging to their village"; that the irrigation channels leading from their four dams were opened and built and were "from time immemorial and are now cleaned, repaired and are kept in good workable condition by the inhabitants of Kakopetria"; that there was a number of water springs, the water of which joins the water of the rivers 'Karvounas' and 'Ayios Nicolaos,' and which water belonged exclusively to the inhabitants of Kakopetria or to some of them; and that "the quantity of water which flows from the said water springs and which ultimately is carried into the said rivers, after part of it is used by the Kakopetria people, is more in quantity or at least equal in quantity to the water which both rivers, i.e. 'Karvounas' and 'Ayios Nicolaos' carry before they reach the points from which the dams divert it in order to be used by the Kakopetria people, as set out hereinbefore." The Appellants did not challenge the Respondents' right to take water from the dams at Evrychou, Tembria and Korakou, but contended that this right was limited to water actually flowing in the river Karkotis, properly so called, and that the villagers of Petra had no *ab antiquo* or other right to use, or to interfere with the Appellants' use of, the water of the rivers Ayios Nicolaos and Karvounas.

10. The action was tried in the District Court of Nicosia between the 17th May and the 26th June 1948. Fourteen witnesses gave evidence

on behalf of the Respondents. All except two of these witnesses were inhabitants of Petra, Korakou or Evrychou. The gist of their evidence, which need not be examined in detail here, was that for as long as the witnesses could remember the inhabitants of Petra had used the water of the Karkotis on stated days between stated times; that they were entitled to the full natural flow of the river water during those times; that the inhabitants of Kakopetria were similarly confined, by ancient user, to the drawing-off of the water of the Ayios Nicolaos and the Karvounas rivers on stated days between stated times, in such a way as

10 not to interfere with the water rights of Petra; and that the inhabitants of Petra had employed water guards during the summer months, whose duty it was to watch the dams above Kakopetria so as to ensure that the natural flow of water was not diverted away from the river channels at times when the inhabitants of Kakopetria were not entitled to use the water for irrigation. In other words, these water guards, it was alleged, were deputed to protect the interests of Petra at the Kakopetria dams by ensuring (whether spasmodically or regularly was not clear) that the people of Kakopetria did not begin to take the water through their dams and sluices before the rising of the Pleiads or Orion (according to the season)

20 and did not continue to use the water (except, as some of the witnesses said, on Fridays) after the sun appeared over the top of the Troodos mountain. The two other witnesses for the Respondents were officials of the Land Registry office who produced certain documents, the admissibility of which is an important issue in this appeal. These documents will be mentioned in greater detail hereafter.

11. The Appellants called 13 witnesses, 10 of whom were inhabitants of Kakopetria. The gist of the evidence of these witnesses was that from the earliest times which they could remember there had never been any question of any limitation of days or times of day on which the Appellants

30 drew, or were entitled to draw, water from their dams in the rivers Ayios Nicolaos and Karvounas; that no one had ever attempted to interfere with their unrestricted use of the water; that they had never seen any so-called water guards or watchers from Petra at the Appellants' dams above Kakopetria; and that they had never been concerned to watch the stars or the sun in relation to their times of irrigation. These witnesses gave evidence also of the fact (in contradiction of the evidence of the witnesses for the Respondents) that the name "Karkotis" was given only to the river below the confluence of the rivers Ayios Nicolaos and Karvounas, and not to the latter two rivers or either of them. They also

40 gave evidence of the existence of 30 or 40 springs which were the private property of the inhabitants of Kakopetria, the water from which fell into the rivers and was thus made available for use by the inhabitants of villages below Kakopetria. It was in evidence that the Kakopetria people did not at any time use more than about one-fifth or one-sixth of the total natural flow of the Ayios Nicolaos and Karvounas rivers, and that the water flowing from the private springs was approximately the same quantity.

p. 57, l. 26-  
p. 98, l. 35.

p. 61, l. 29-p. 62, l. 9  
p. 64, l. 43-p. 65, l. 22.  
p. 73, ll. 11-19.  
p. 75, ll. 41-46.  
p. 83, ll. 19-51.

p. 59, ll. 6-8.

p. 61, l. 29-p. 62, l. 9.

12. In substance, therefore, the issue between the parties was whether the Respondents had any right by custom, prescription or

otherwise to restrain the Appellants at any time from diverting the water at their four dams in the Ayios Nicolaos river (or its tributary) and the Karvounas river for the purpose of irrigating the Kakopetria village lands.

13. The Appellants, in addition to the 10 witnesses from Kakopetria, also called three witnesses who were inhabitants of Galata. These witnesses conceded that the water rights of Galata were only effective from the rising of the Pleiads (or, after the 28th August, of Orion) until sunrise but they did not confirm that Kakopetria was similarly limited. On the contrary, one of them said "Kakopetria people are entitled to irrigate any time they want." He also said (and this was confirmed by a witness from Kakopetria) that at the end of May the Pleiads are not visible at all from Kakopetria. 10

14. In this conflict of oral evidence, both the District Court and, on appeal, the Supreme Court were decisively influenced by certain documentary evidence, as will be shown hereafter, to accept the Respondents' version, and to reject the Appellants' version, as to the limitation of the Appellants' rights by reference to particular days and hours, in the user of the water of the two rivers which joined to make the Karkotis river. A part of the documentary evidence consisted of survey plans (Exhibits 1A, 1B and 1C) and extracts of entries in a so-called "Field Book" (Exhibits 2A, 2B, 2C and 13 (A-2), 13 (B-2) and 13 (C-2)). The Appellants objected to the admission in evidence of these documents when they were produced by a Land Registry clerk, Christakis Savvides (witness No. 9 for the Respondents). The relevance of these documents does not, however, appear to be great, nor their weight substantial in reference to the main issue in this appeal. The three survey plans show the course of the Ayios Nicolaos river from a point below the Frantziko dam (which, however, is not marked) up to its sources. In two of the plans (Exhibits 1A and 1B) the river is called "Karyiotis Potamos." The name does not appear at all in the third plan (Exhibit 1C), and none of these plans covers the river Karvounas. At the highest, plans 1A and 1B appear to show that in 1925, when they were made, the Ayios Nicolaos river was described to the maker of the plans, by someone unknown, as "Karyiotis." The Field Book was apparently prepared at Petra in 1893, and the entries exhibited record the individual rights of certain inhabitants of Petra to take running water for 30 or 45 minutes "from the river Karkut of Troodos." These words seem to suggest no more than that the river bearing this name was described as being fed from sources in the Troodos area, a proposition which no one disputes. It is submitted that these documents, and certain others which were admitted in evidence for the same purpose, amount merely to hearsay and cannot be of any weight or assistance in deciding the conflict of oral evidence, which principally relates to a very different question from one merely of nomenclature. If and in so far as any deductions which have been, or might be, made from these documents are relevant to any issue in this Appeal, the Appellants maintain their objection to the admissibility thereof. 20 30 40

15. In this connection, it may be mentioned also, as reflecting on the credibility of the evidence offered on behalf of the Respondents, that

p. 58, l. 27-p. 60.  
p. 76-p. 77, l. 13.  
p. 85, l. 32-p. 87, l. 35.  
p. 59, ll. 25-41.  
p. 76, ll. 30-38.

p. 59, l. 23.  
p. 80, l. 35.  
p. 58, l. 45.

Separate documents.  
pp. 259, 260.  
pp. 288, 289.  
p. 36, l. 40-p. 39, l. 30.

Exhibits 1A, 1B, 1C  
(separate documents).

Separate documents.

Separate document.  
p. 43, ll. 30, 38, 39.

p. 37, ll. 28-32.

pp. 259-260, l. 17;  
pp. 288, l. 8-p. 289.  
p. 259, ll. 12, 13.

the Respondents' case was that the dam known as Ayios Nicolaos was in the river called Ayios Nicolaos (which the Respondents' witnesses said was properly, or at any rate alternatively, called Karkotis). The Respondents' first witness, for example, expressly stated that: "In Ayios Nicolaos river there are four dams: Ayios Nicolaos, Frantziko, Vassiliko and Kapatokas." Other witnesses for the Respondents appear to deny that they knew a river in that locality by the name "Kokkinorotsos." Yet when, in the course of the appeal to the Supreme Court, the Court asked the Land Registry clerk, Christakis Savvides, already mentioned

10 as a witness for the Respondents, to prepare a survey plan or map of the area in question, the clerk, in producing the plan (Exhibit A) which he had prepared and in giving fresh evidence before the Supreme Court, made it clear that the dam called Ayios Nicolaos was not in the river Ayios Nicolaos, but in a tributary thereof called Kokkinorotsos. It also appeared that this witness was unable to give a name to the river which has been called Karvounas throughout this Case. It should also be mentioned that in the argument before the Supreme Court, arising out of this fresh evidence, the Respondents appeared to have difficulty in defining with precision to what dams or waters their claim applied, or the extent to which

20 the injunction which they claimed should apply.

p. 13, ll. 17, 18.

p. 28, ll. 43, 44.

p. 31, ll. 1-7.

p. 177, l. 41-

p. 180, l. 20.

p. 210, l. 16-

p. 213, l. 3.

Separate document.

p. 241, l. 9-p. 242, l. 20.

p. 239, ll. 32-42.

p. 242, l. 25-

p. 247, l. 5.

16. The document which, as will be shown hereafter, was treated by, at any rate, the Supreme Court as being of substantial importance, and, indeed, as a decisive factor in leading the Court to accept the oral evidence of ancient rights tendered on behalf of the Respondents, and to reject the evidence on behalf of the Appellants to the contrary effect, was a survey report (Exhibit 5), to which there appears to have been attached a sketch or plan (Exhibit 6) prepared in connection with the report. The plan (Exhibit 6), apart from recording certain names of places, appears to add nothing whatsoever of any materiality in support of the Respondents' contentions as to ancient user or rights. The report (Exhibit 5), however, in explaining the plan in a passage headed "Reference" at the end of the report, purports to specify the practice then existing as to the taking of water by the inhabitants of the various villages, including Kakopetria and Petra. The Reference, in substance, appears to say that the people of Kakopetria take their water from the four dams above Kakopetria "on Saturday, Sunday, Monday, Wednesday and Thursday from the appearance in their village of Pleiades till the sunrise, and on Friday from the appearance of Pleiades until the shadow of a standing man will approach 7 feet, a.m., from the spot standing to the shadow of his head.

30 They continue to take their water in the aforesaid time from the 14th June to 14th August, and from the 15th August to the 13th June of the following year they commence to take their water from the appearance of Orion's belt instead of Pleiades." So far as the practice of the people of Petra is concerned the report is not altogether easy to follow, but it appears, at least broadly, to support the contention of the Respondents on this matter. Assuming, for this purpose, that the report corroborates the evidence on behalf of the Respondents in spite of various discrepancies, it is, the Appellants submit, vital to ascertain whether or not the report is admissible evidence against the Appellants. If, for example, the fact were that the

40 report was based entirely on information supplied by the people of Petra,

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p. 252, ll. 29-31.

p. 262, l. 27-

p. 270, l. 30.

Separate document.

pp. 265, l. 20-

p. 270, l. 30.

p. 265, ll. 20-44.

p. 265, ll. 25-33.

pp. 266, l. 22-

p. 270, l. 30.



which the people of Kakopetria never had the opportunity of rebutting or correcting, it would, it is submitted, be entirely wrong that the report should be relied upon in any way as evidence against the Appellants.

17. The report is dated the 13th August 1901. It was prepared by one Salim Effendi, apparently on the instructions of the Registrar General. It had been kept in the office of the Director of the Land Registry since that date. The only oral evidence as to the report was given by Christakis Savvides (witness No. 9 for the Respondents), who is a clerk in the Land Registry, Nicosia, and who, it is submitted, quite obviously knew nothing either as to the circumstances in which, or the instructions on which, the report had been prepared or as to any use which had been made of the report. The only evidence on this point was given by Savvides, after he had been given an opportunity, by the Court, to break off his testimony in order to go and find out about the report :—

“ *Court* : I want you to make two points clear. Did you find out for what purpose was carried out that local enquiry ?—*A*. It was made on the instructions of the Director of the L.R.O.” (i.e., Land Registration Office) “ to register those lands which were sold or purchased and for the other lands to make a note that they have the right of irrigation.

“ *Q*. Was it part of his duty to prepare (A) plan (B) report ?—*A*. Yes.”

18. This evidence, given without any indication of the source of information or any documentary support, was, it is submitted, inadmissible as hearsay, and in any event was of no weight. Moreover, if admissible, it showed no more than that the enquiry on which the report was based related to the irrigation rights *inter se* of the various owners of lands of Petra village, and had nothing whatever to do with the rights of the inhabitants of Petra as against other villages. If that be so, the enquiry on which the report was founded was plainly irrelevant to any issue in the present appeal, and the report itself was consequently irrelevant. When one looks at the report itself, it seems, again, to be the only reasonable inference that the instructions on the basis of which Salim prepared this report were instructions as to the water rights, *inter se*, of the inhabitants of Petra—that is, its distribution amongst the various “ divisions ” of the village of Petra, and that the instructions had nothing to do with the total quantity of water to which Petra was entitled, as against other villages. This, it is submitted, appears from the first seven lines of the report and from the concluding two lines. It is only when one comes to the “ Reference,” appended to the report, that the existing practice of other villages is mentioned, and, it is submitted, there is no indication either that this enquiry was included in Salim’s instructions or that he made any enquiries from the inhabitants of the villages in question with regard thereto, or that the report, when made, was ever available to any member of the public for inspection or challenge.

19. The Appellants through their Counsel objected to the admission in evidence of the report. Their objection was overruled.

20. On the 6th November 1948 the District Court of Nicosia gave judgment in favour of the Respondents and granted an injunction against the Appellants in the terms claimed in the Writ and Statement of Claim. The essence of the judgment is to be found in the following passage :—

pp. 119-127.

p. 120, l. 41-  
p. 121, l. 24.

10 “ A number of witnesses was called by both parties in order to support their allegations. There is no doubt that the great majority of the witnesses called by either side was directly interested in the result of the case and the witnesses who were seemingly uninterested, with the exception of those who came to produce documentary evidence, did not help much the Court in coming to a decision in this case. Persons of old and middle age were called by both sides ; one group contradicted the other, if not directly, indirectly, and put forward allegations favourable to the side by which they were summoned. Indeed it would have been difficult for the Court to arrive at a decision in this case had the evidence or contentions put forward by one side or the other not been corroborated by any documentary evidence. On the whole, however, we should say that the evidence of the witnesses of the Plaintiffs about *ab antiquo* user and system of hours of irrigation appeared to us to be more natural and truthful than that of the witnesses of the Defendants whose evidence was more or less of a negative nature. The Plaintiffs gave a detailed account of the hours by observing the movements of the stars in the sky, measuring the shadow of a man at a particular spot and spots and also mentioning the days on which they diverted their water in certain sluices to the main river for their own use, whereas the Defendants’ answer to these all was a complete denial. We have been asked in effect to find that what Plaintiffs deposed in connection with the system of taking and conducting the water to their properties was a pure invention and that Kakopetria people were never interested in any signs or appearance of stars in the sky. We think Defendants’ witnesses were trying all the time in material point, i.e., in points favourable to the Plaintiffs, to conceal the facts from the Court and the easiest way to do it was to pretend a complete lack of knowledge on their part.

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“ Nevertheless, as it has already been stated, it would not have been easy for the Court to decide this case only on the oral evidence if no corroboration from other sources was forthcoming.

40 “ In our view there is strong corroborative evidence to establish the claim of the Plaintiffs in this case.”

The Court’s criticism of the evidence given on behalf of the Defendants is, it is submitted, unwarranted. The Court was not asked to regard the evidence of the Plaintiffs’ witnesses as “ pure invention,” but merely to find that the alleged limitation as to days and hours of taking water, which was admitted to apply in respect of Galata, was not proved to apply also to Kakopetria.

21. The corroborative documentary evidence relied on by the District Court was, in part, the documents already referred to in paragraph 14 of this Case. Those documents, for the reasons there given,

were, it is submitted, inadmissible in evidence, and, in any event, of no corroborative value. When, however, the Court came to consider the question of the alleged ancient user of the water, it relied strongly, if not exclusively, on the documentary evidence of Salim's report (Exhibit 5) coupled with the plan (Exhibit 6). The Court, it would seem, admitted these documents in evidence as ancient documents and by virtue of Section 4 of the Cyprus Law 14 of 1946 (The Evidence Law 1946). The relevant sections of that Law are set out in the Appendix to this Case. It provides, by Section 3, that the law and rules of evidence in force in England on the 5th November 1914 shall apply in proceedings in Cyprus. 10 By Section 4 it enacts, with certain alterations, provisions corresponding to those contained in Sections 1 and 6 (2) of the English Evidence Act 1938.

22. The Appellants by notice of appeal dated the 17th December 1948 appealed to the Supreme Court of Cyprus from this judgment of the District Court. By its judgment dated the 6th April 1950 the Supreme Court dismissed the appeal, subject to an alteration in the wording of the injunction. In the course of its judgment the Supreme Court said :—

“ It will be seen that a large part of the conclusions of the trial Court concerned matters of fact and unless we felt satisfied that these conclusions were based on insufficient or inadmissible evidence, we could have no reason to differ from them.” 20

The Court, in dealing with the question of *ab antiquo* rights in respect of the water, referred to the objection taken on behalf of the Appellants to the admissibility of the documentary evidence, and proceeded :—

“ The document which seems to have had most influence on the trial Court and which has certainly influenced us, was a report accompanied by a map made by a surveyor of the Lands Office, on the instructions of his superiors, on the 14th August 1901.” (That is, Exhibits 5 and 6.) “ It is an official document, produced 30 from the proper custody and it is nearly 50 years old. It was admitted under s. 4 (1) (a) (ii) of the Evidence Law, 1946, and also as an ancient document.

“ Whether or not this document is part of a continuous record, as mentioned in section 4 (1) (a) (ii) of the Law, seems at least doubtful, but the maker must be supposed to have had personal knowledge of some at least of the matters that he records, particularly the physical situation that he describes and records in his map. Moreover the document is an ancient document produced from proper custody. 40

“ We think, therefore, that the trial Court was right in admitting both the report and the map and there is no reason to think that the Court gave improper weight to them.”

23. As to this part of the Judgment, it is respectfully submitted that the mere fact that the documents may have been ancient documents produced from proper custody is in itself no ground for treating them as admissible evidence against the Respondents; and that the doubt

p. 124, l. 22-  
p. 125, l. 40.

Separate document.  
p. 124, ll. 24-51.

p. 127, l. 20-p. 128.

pp. 248-253, l. 15.

p. 253, ll. 1-11.

p. 251, ll. 29-32.

p. 252, ll. 25-29.

p. 252, ll. 29-44.

p. 262, l. 30-  
p. 270, and separate  
document.



expressed by the Supreme Court as to the admissibility of the documents under Section 4 (1) (a) (ii) of the Evidence Law is amply justified. It was not established (and it would appear that it was not the fact) that either the report or the plan was, or formed part of, "a record purporting to be a continuous record." As an additional ground for contending that Section 4 (1) (a) (ii) of the Evidence Law is inapplicable, the Appellants submit that there was no evidence, and nothing warranting an inference to be drawn, that the maker of the statements contained in the report (Salim) made the statements as to the alleged practice then prevailing in Kakopetria, or in Petra, "in the performance of a duty to record information," as to any of these matters, or that such information was "supplied to him by a person who had, or might reasonably be supposed to have, personal knowledge of these matters." (Personal knowledge of the "physical situation," referred to by the Supreme Court is, it is submitted, irrelevant for present purposes.) Accordingly, the Appellants respectfully submit that the report and the plan (Exhibits 5 and 6) were both inadmissible in evidence against the Respondents; and that in the absence of these documents it appears, or is a legitimate inference from the words used in the judgments, that neither of the Courts below would have been prepared to hold that the Respondents had discharged the onus of proof resting upon them as to ancient user; and, further, that if the oral evidence be examined, excluding the inadmissible documents, the weight of evidence on this matter inclines heavily in favour of the Appellants and against the Respondents.

24. The Supreme Court further held, agreeing with the District Court, that the Appellants had failed to prove their defence that in any event there had been an abandonment by the Respondents of any ancient rights which they may have had. p. 252, ll. 23-25.  
p. 126, ll. 38-50.

25. The Supreme Court also, agreeing with the views expressed by the District Court, rejected the Appellants' defence, based on their evidence that they owned private springs and that the privately owned water therefrom which was allowed to fall into the rivers Ayios Nicolaos and Karvounas was equal to the amount of water which they took out for irrigation. The Supreme Court's view was:— p. 251, ll. 14-24.  
p. 126, ll. 15-34.  
p. 251, ll. 18-21.

"If, as the Court found, the Defendants had taken water which belonged to the Plaintiffs' they could not excuse themselves by putting back other water which belonged to them and to which the Plaintiffs made no claim."

It is respectfully submitted that this is a misconception. The Respondents were not entitled, on any view, to receive any particular, specific, or identifiable water. They were entitled if they established their claim, to a quantity of water. If they received the quantity of water to which they were entitled, they could not claim—and certainly, it is submitted, would not be entitled to the remedy of an injunction—merely because the particular water which was allowed to flow down the river below Kakopetria contained a proportion of water which the Appellants had added out of their own private water resources.

26. The Supreme Court agreed also with the District Court in holding, contrary to the Appellants' contention, that the rights of the Respondents were not limited to the water which might at any time be found in the river Karkotis below the confluence of the Ayios Nicolaos and Karvounas rivers, but extended to the water of those two rivers, which the Supreme Court describes as "tributaries."

27. By Order dated the 3rd August 1950 the Supreme Court granted to the Appellants leave to appeal to His Majesty in Council.

28. The Appellants humbly submit that this Appeal should be allowed, with costs, for the following among other

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### REASONS

- (1) BECAUSE certain documents, and in particular Exhibits 5 and 6, admitted in evidence and relied on in the Courts below, were inadmissible in evidence against the Appellants.
- (2) BECAUSE if such documents are excluded from evidence, the evidence remaining is wholly insufficient to establish the rights claimed by the Respondents.
- (3) BECAUSE, even if all the evidence admitted in the Courts below be regarded as admissible, the evidence is still insufficient to establish the rights claimed by the Respondents. 20
- (4) BECAUSE the evidence shows that the Appellants made available from water privately owned by them as much water as they removed for purposes of irrigation and in such circumstances no injunction should have been granted.
- (5) BECAUSE the rights of the Respondents extended only to the use of water in the river Karkotis, and not to water in the rivers Ayios Nicolaos or Karvounas or their tributaries. 30
- (6) BECAUSE the injunction granted was in any event too wide in its terms, since the Respondents' evidence as to ancient user, if accepted, relates in substance only to the right of diversion at particular times on particular days from one dam, namely the Frantziko dam.
- (7) BECAUSE the Judgment of the Supreme Court of Cyprus was wrong and should be reversed.

C. P. HARVEY.

JOHN MEGAW.

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## APPENDIX.

## THE EVIDENCE LAW, 1946 (LAW 14 OF 1946).

*General.*

3. Save in so far as other provision is made in this Law or has been or shall be made in any other Law in force for the time being, every Court, in the exercise of its jurisdiction in any civil or criminal proceeding, shall apply, so far as circumstances may permit, the law and rules of evidence as in force in England on the 5th day of November 1914.

*Provisions relating to Civil Cases.*

10 4.—(1) In any civil proceeding where direct oral evidence of a fact would be admissible, any statement made by a person in a document and tending to establish that fact shall, on production of the original document, be admissible as evidence of that fact if the following conditions are satisfied, that is to say :—

(a) if the maker of the statement either—

(i) had personal knowledge of the matters dealt with by the statement ; or

20 (ii) where the document in question is or forms part of a record purporting to be a continuous record, made the statement (in so far as the matters dealt with thereby are not within his personal knowledge) in the performance of a duty to record information supplied to him by a person who had, or might reasonably be supposed to have personal knowledge of those matters ; and

(b) subject to sub-section (2) of this section, if the maker of the statement is called as a witness in the proceedings :

30 Provided that the condition that the maker of the statement shall be called as a witness need not be satisfied if he is dead or unfit by reason of his bodily or mental condition to attend as a witness, or if he is beyond the seas and it is not reasonably practicable to secure his attendance, or if all reasonable efforts to find him have been made without success.

(2) In any civil proceedings, the Court may, at any stage of the proceedings, if having regard to all the circumstances of the case it is satisfied that undue delay or expense would otherwise be caused, order that such a statement as is mentioned in sub-section (1) of this section shall be admissible as evidence or may, without any such order having been made, admit such a statement in evidence—

40 (a) notwithstanding that the maker of the statement is available but is not called as a witness ;

(b) notwithstanding that the original document is not produced, if in lieu thereof there is produced a copy of the original document or

of the material part thereof certified to be a true copy in such manner as may be specified in the order or as the Court may approve, as the case may be.

(3) Nothing in this section shall render admissible as evidence any statement made by a person interested at a time when proceedings were pending or anticipated involving a dispute as to any fact which the statement might tend to establish.

(4) For the purposes of this section, a statement in a document shall not be deemed to have been made by a person unless the document or the material part thereof was written, made or produced by him with his own hand, or was signed or initialled by him or otherwise recognized by him in writing as one for the accuracy of which he is responsible. 10

(5) For the purpose of deciding whether or not a statement is admissible as evidence by virtue of the foregoing provisions, the Court may draw any reasonable inference from the form or contents of the document in which the statement is contained, or from any other circumstances, and may, in deciding whether or not a person is fit to attend as a witness, act on a certificate purporting to be the certificate of a registered medical practitioner, and the Court may in its discretion reject the statement notwithstanding that the requirements of this section are satisfied with respect thereto, if for any reason it appears to it to be inexpedient in the interests of justice that the statement should be admitted. 20

(6) Nothing in this section shall prejudice the admissibility of any evidence which would, apart from the provisions of this section, be admissible or enable documentary evidence to be given as to any declaration relating to a matter of pedigree, if that declaration would not have been admissible as evidence if this Law had not been enacted.

17. Where any register is kept or any entry or record is made, under any Law in force for the time being, an extract therefrom or a copy thereof purporting to be signed and certified as a true copy by the person having authority to keep the register or make the entry or record shall be admissible, in any proceedings whether civil or criminal, as evidence of all that is stated therein relating to such register, entry or record. 30

**In the Privy Council.**

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**ON APPEAL**

*From the Supreme Court of Cyprus.*

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**BETWEEN**

**THRASSIVOULOS**

**IOANNOU and Others**

(Defendants) - - - *Appellants.*

**AND**

**PAPA CHRISTOFOROS**

**DEMETRIOU and**

**Others (Plaintiffs) - *Respondents.***

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**Case for the Appellants**

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