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UNIVERSITY OF LONDON  
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No. 46 of 1950-1956  
8 OCT 1956

INSTITUTE OF ADVANCED  
LEGAL STUDIES

# In the Privy Council.

## ON APPEAL

44362

FROM THE SUPREME COURT OF CYPRUS.

### BETWEEN

THRASYVOULOS IOANNOU of Kakopetria, personally and as  
representing THE PROPRIETORS OF THE IRRIGATION DIVISION  
OF KAKOPETRIA,

- 10 PHILOTHEOS STAVROU of Troodos,  
HARALAMBOS VIOLARIS of Kakopetria,  
IOANNIS VASSILIOU of Kakopetria,  
HEREDOTOS KAZANOS of Kakopetria, and  
CHRYSTALLOU HARALAMBOUS of Kakopetria (Defendants) *Appellants*

### AND

- PAPA CHRISTOFOROS DEMETRIOU,  
TOFIS PAPA GEORGHIOU,  
CHRISTODOULOS HJI YIANNI,  
EMILIOS N. KAMENOS,  
MEHMED RAIF HADJI MULLA ALI,  
20 APHRODITI GEORGHIOU,  
CHARALAMBOS I. EFTHYMIU,  
NEOFYTOS KAROLIDES,  
PERIKLIS DEMETRIOU,  
NEOFYTOS PAPA GEORGHIOU,  
MARITSA NEOFYTU,  
CHRISTOS MICHAELIDES,  
PAPA GEORGHIOS TOFI,  
CHRISTOS CONSTANTI,  
HARICLIS PAPA CHRISTOFOROU,  
30 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,  
MICHAEL ANASTASI,  
NEOFYTOS IOANNOU,  
40 MICHAEL SERAPHIM,  
MARITSA HADJI YIANNI,  
ELENI THEOCHAROUS,  
CHARAL. K. CHARALAMBIDES,

RESPONDENTS CASE

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 KLEANTHI DEMETRI,  
 ASINETTA GEORGHIOU,  
 THEODOSIS CHARALAMBOUS, 20  
 POLYKARPOS CH. KARAOLIDES,  
 ATHINA NEOKLEOUS,  
 MICHAEL LAMBI,  
 ATHINA HADJI NICOLA,  
 PHINIKOU MICHAEL,  
 GEORGHIOS HJI DHAVID,  
 CLEODNORA CHRISTODOULOU,  
 MEROPI HADJI YIANNI,  
 HADJI HARALAMBOS KOURIDES,  
 HADJI PARASKEVOU K. KYRILLOU, 30  
 EFROSYNI CHRISTODOULOU,  
 MARIKOU LAMBI,  
 MICHAEL Y. KALLOURI,  
 CONSTANTIS SARAFIS,  
 GEORGHIOS DEMETRI,  
 LOIZOS Y. ELIOTI,  
 AGATHI CH. KOURTELLI,  
 MARIKOU PAVLOU,  
 ELLI M. KOLESIDOU,  
 ZOE IORDANOUS, 40  
 CHARAL. G. KALLOURI,  
 YANNAKIS KOURTELLIS,  
 MICHAEL PAVLOU,  
 KYRIACOS KYRIAKIDES,  
 ELIAS ILARION,  
 ATHENA MICHAEL,  
 GEORGHIOS LOUCA,  
 YANNI PELEKANOS,  
 IFIGHENIA KARAOLIDOU,  
 YANNIS M. KALLOURIS,

- MEHMED ALI SOULEIMAN,
  - PINELOPI L. SERGHIDOU,
  - THEODORA KOURTELLI,
  - DOROTHEA KYRIAKIDOU,
  - ANTIGONI H. ELIADOU,
  - AGATHI IOANNOU,
  - NICOLAS P. SAVVIDES,
  - SALIH NAIM,
  - KLEONIKI MICHAEL,
  - 10 CHARALAMBOS PAVLOU,
  - LOUCAS PAVLOU,
  - OSMAN TALAT of Lefka for PETRA MOSQUE,
  - ANNA IACOVOU,
  - IOANNIS K. MYRIANTHOUSIS,
  - ANASTASSIS LEVENTIS,
  - FROSA N. KAMENOU,
  - RENOS N. KAMENOS,
  - DOROS N. KAMENOS,
  - DIRANDI N. KAMENOU,
  - 20 NEDHI KAMENOU,
  - ESDMONDI N. KAMENOU,
  - ANDREAS N. KAMENOS, and
  - CHRISTODOULOS LEVENTIS,
- all of Petra (Plaintiffs) - - - - - Respondents.
- } Minors through their  
 mother guardian and  
 next friend FROSSO N.  
 KAMENOU of Petra

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## CASE FOR THE RESPONDENTS.

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1. This is an appeal from a judgment of the Supreme Court of Cyprus (Sir E. St. J. Jackson, C.J., and G. C. Griffith Williams, J.) dated the 6th day of April 1950, affirming (subject to an alteration of wording) a judgment of the District Court of Nicosia (M. Zekia, P.D.C., and N. Pierides, D.J.) dated the 6th day of November 1948.

RECORD.  
p. 248.  
p. 119.  
p. 11.

2. The main question at issue in this appeal is whether there is any sufficient reason for reversing or altering the concurrent findings of fact of the said District Court and the said Supreme Court as to the nature of the ancient usage relating to the taking of the water of the Karkotis river system by the inhabitants of the adjoining and neighbouring villages for the purpose of irrigating their lands. Both Courts accepted the evidence of the Respondents' witnesses, which received corroboration from documents, to the effect that by the ancient usage each of the villages concerned (including Kakopetria, the uppermost village, of which the Appellants are inhabitants, and Petra, one of the lowest villages, of which the Respondents are inhabitants) takes water only at specified times fixed by the ancient usage. Both Courts rejected the evidence of the Appellants' witnesses to the effect that by the ancient usage the inhabitants of

pp. 121, 126,  
251, 252.  
pp. 11, etc.  
pp. 58, 59 etc.  
pp. 133, ll. 4-  
10, 234, ll. 6-  
10.

RECORD. Kakopetria take the water at any time of the day or night to the full extent of their own requirements, whether or not any remainder is left to flow down to the other villages.

3. By the law of Cyprus there is a general principle that any person is entitled to make such reasonable use of the water of a river or stream for purposes of irrigation as is not inconsistent with the rights of other persons, and where such water is used by several persons and a method of allocation has been established by ancient usage that method of allocation is binding and has the force of law.

*Raglib Bay Hafuz Hassan v. Gerasimo Abbot of Kykko* (1894) 3 10  
Cyprus L.R. 105, 122.

*Sophronios Louca and Others v. Haji Papa Symeon Nicola* (1901) 5  
Cyprus L.R. 82, 85, 86.

*Antonake Papa Panagi v. Joanne Jasimidou* (1904) 6 Cyprus L.R.  
85, 89.

*Papa Philippou v. Christodoulos Georgiades* 7 Cyprus L.R. 1, 3, 5.

p. 133, ll. 20-21. 4. The Karkotis river system flows down from the slopes of Mount Troodos in Cyprus in a northerly direction towards Morphou Bay. It is shown in five plans, which are Exhibits separate from the Record.

pp. 36, 37, 42, 43, 121, 201-203. pp. 36-37. 5. Exhibits 1 (C), 1 (B) and 1 (A) are certified copies of official plans made 20 in the years 1925 and 1926 by the survey department of the Land Registry Office and retained by that department. Objection was taken on behalf of the Appellants to the admissibility of these plans as evidence, but the objection was overruled. These plans show the streams coming from the upper slopes of Mount Troodos to the village of Kakopetria. The highest and most southerly parts appear in Exhibit 1 (C), which shows on the right hand (easterly) side three brooks tending to converge and on the left-hand (westerly) side another brook near an aerial ropeway. The top of Exhibit 1 (C) connects with the foot of Exhibit 1 (B). Exhibit 1 (B) shows on the right-hand side the convergence of the three brooks and after that the "Karyiotis Potamos" (River 30 Karkotis) receiving the waters of the Kokkinorotsos Potamos (which comes in from the left near the aerial ropeway) and flowing on past the Ayios Nicolaos Monastery, which is marked near the top and towards the right-hand side of Exhibit 1 (B). Exhibit 1 (A), in the right-hand lower corner, shows the continuance of the "Karyiotis Potamos."

pp. 12, 13, 24, 31, 90, 92, 285. Whether or not the point is ultimately material, these three survey plans and other evidence prove that the stream flowing past the Ayios Nicolaos Monastery is called "Karkotis," though there is also evidence proving that it has a second name, "Ayios Nicolaos."

pp. 135, 149, 177-180, 210-212, 237-238. 6. Exhibit A is a new plan, prepared specially for the purposes of this case 40 at the request of the Supreme Court, in order to show the streams, dams and channels in Kakopetria.

The stream shown on Exhibit A uncoloured and coming in from the lower left corner is the stream which is called "Kokkinorotsos Potamos" on Exhibit 1 (B), and the stream shown coloured blue and joining it near the Ayios Nicolaos Dam and Channel is the stream which is called "Karyiotis Potamos" on Exhibits 1 (B) and 1 (A). Three other dams and channels, called "Frantziko," "Kapadoucas" and "Vasiliko" are shown on this stream. RECORD.  
p. 241, l. 10.

Coming in from the lower right-hand corner of Exhibit A there is another stream, not named on this plan but in fact called the "Karvounas" or "Garillis" and having on it three dams and channels called "Karydhi," "Pefkos" and "Apliki." p. 134, ll. 8-10

At the top of Exhibit A the two streams are shown joining immediately below two bridges. The stream from the junction downwards is agreed to be "Karkotis."

The dams and channels of which the use by the inhabitants of Kakopetria for irrigation of their lands is said by the Appellants to be unrestricted and by the Respondents to be restricted to certain times are the Ayios Nicolaos and Frantziko on the one stream and the Karydhi (perhaps including the Pefkos) and the Apliki on the other stream, all shown on Exhibit A. The other two dams and channels shown on Exhibit A, the Kapadoucas and the Vasiliko, p. 133, ll. 1-2.  
20 belong to another village called Galata and are not claimed by Kakopetria.

7. Exhibit 6 is a plan prepared in the year 1901 by Salim Effendi, a surveyor in the Land Registry Office, in the course of his official duty. This plan shows the course of the Karkotis river system, with its dams and channels marked in detail, from Kakopetria, which is the Appellants' village, through many intervening villages to Petra, which is the Respondents' village. Another village called "Elia" or "Elaea" is not shown on Exhibit 6 but is about a mile beyond Petra. The details of the plan and the operation and use of the dams and channels are explained in Salim Effendi's Report, Exhibit 5. Objection was taken on behalf of the Appellants to the admissibility of Salim Effendi's Report and Plan (Exhibits 5 and 6) as evidence, but the objection was overruled. pp. 40-42.  
p. 75, ll. 19-20  
p. 262.  
pp. 40-42.  
30

It will be convenient to refer sometimes to the villages of Kakopetria, Galata and Sina Oros as "the upper villages," and to Evrykhon, Tembria and Korakou as "the middle villages," and to Petra and Elia as "the lowest villages." There are other villages shown on Exhibit 6 and mentioned in the evidence, but they are less important for the purposes of the present case.

The gist of the Respondents' contention, put very shortly, is that at the appropriate times the water in question should be allowed to pass uninterrupted through the upper villages into the middle villages, where it can be directed into the appropriate channels for flowing on towards the lowest villages. 40

8. The Respondents commenced the action as Plaintiffs against the Appellants as Defendants by a writ of summons dated the 26th September 1941. The principal claim indorsed on the writ of summons was p. 1.  
p. 4.

“ 1. For an injunction restraining the Defendants, their agents and servants from in any way unlawfully interfering with the water, and/or the Plaintiffs’ right to take or irrigate their lands from the water, of or running through the rivers Karvouna, Ayios Nicolaos and Karkotis and/or of the dams ‘ Ayios Nicolaos,’ ‘ Frantziko ’ and/or of any other dam and/or of the bed and channels 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 Evrychou ’ at Evrychou is seven feet, at the dam and/or locality ‘ Vrokotos ’ at Tembria six feet, and/or at the dam and/or locality ‘ Sanidi Korakous ’ at Korakou seven feet, to the rising of the Pleiads (Plias) from the beginning of May to the 28th August and to the rising of the Orion ‘ Poaletri ’ from the 28th August to the beginning of May each year, which water and/or right to take or irrigate from such water belongs to the Plaintiffs by registration, from time immemorial, by custom and/or prescription.” 10

p. 4.  
p. 127.

pp. 127, 253.

There were also claims for damages, interest and costs. The claim for damages, and the consequential claim for interest, failed because no particulars of damage had been given. The claims for an injunction and for costs succeeded as hereinafter appears. 20

p. 5.

9. The Statement of Claim dated the 16th October 1943, after referring to the streams and dams in or near Kakopetria and alleging the Respondents’ water rights and exercise thereof from time immemorial, continued as follows:

“ 7. On the 27th and 28th May, 1941, the Plaintiffs’ watermen . . . . at the time at which as stated above the Plaintiffs were entitled to take the water, were watching same at the dam ‘ Frantziko ’ at Kakopetria for the purpose of seeing to its passing uninterrupted through the said dam for the eventual use of the Plaintiffs but on the 27.5.1941 the Defendants 1, 2, 3 and 4 and on the 28.5.1941 the Defendants 5 and 6 wrongfully and unlawfully prevented the water from running through the said dam and/or the watermen from taking the water, and diverted the whole of it to their co-villagers’ gardens or other properties.” 30

“ 8. On or about the 3rd June, 1941, the Plaintiffs 1, 2 and 3 and some others as representatives of all the Plaintiffs proceeded to Kakopetria and protested to the Defendants 1 and 4 for their trespass and wrongful acts above mentioned, but the said Defendants not only declared that they would not allow them to take the water at any time but also that they should not even approach their village.”

p. 6.  
p. 6.

Paragraph 9 of the Statement of Claim alleged deprivation of water and resulting damage. Paragraph 10 referred to the Appellants’ *legitimate* taking of the water in these terms:— 40

“ 10. The Defendants and generally the village of Kakopetria are taking the water of the rivers ‘ Karvounas,’ ‘ Ayios Nicolaos ’ and ‘ Karkotis ’ all the days except Tuesday of each week from the rising

of Pleiad (Plias) from the beginning of May to the 28th of August and from the rising of Orion (poaletri) during the other period of each year to sunrise.”

RECORD.

Paragraph 11 of the Statement of Claim referred to the Appellants' *wrongful* taking of the water in these terms:— p. 6.

10 “ 11. Furthermore the Defendants since the 27th May, 1941, are also taking the water of the said rivers during the time the villagers of Evrychou, Tembria and Korakou are entitled to and consequently they are now enjoying the whole of the water for 24 hours every day except surplusage to the deprivation of same and in complete defiance of the rights of irrigation of all other villagers including that of Petra.”

10 10. The Appellants in their Statement of Defence and Counterclaim dated the 29th May 1944 did not (or at any rate did not at all distinctly) plead any contention or allegation on the lines of the evidence afterwards given on their behalf to the effect that the Appellants as inhabitants of Kakopetria were entitled to or did by ancient usage take the water at any time of the day or night to the full extent of their own requirements, whether or not any remainder would be left to flow down to the other villages, nor any other contention or allegation which could afford justification for the Appellants' conduct in and after May 1941 (as alleged in the Statement of Claim and proved by the evidence) in wholly excluding the watermen of Petra and the other villages from controlling or supervising at any time the regulation of the flow and direction of the water at any of the dams used by the people of Kakopetria for taking the water. p. 6. pp. 12, 23, 25, 26, 32.

The Statement of Defence and Counterclaim traversed the principal allegations in the Statement of Claim, and (among many other matters) alleged that

30 “ 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. . . . In any event the inhabitants of Kakopetria, of which Defendants are members, were and are taking such quantity of water which is proportionate to the area of irrigable land belonging to the village of Kakopetria.” p. 7, ll. 5-10, 17-20. p. 8, ll. 15-17, 38-43.

But the evidence given on behalf of the Appellants did not support and was not consistent with a claim to a merely proportionate quantity of water, nor did it show the proportion borne by the irrigable land of Kakopetria to the irrigable land of any other village or group of villages.

40 In the Statement of Defence and Counterclaim it was specifically denied that the Plaintiffs or any of them had any *ab antiquo* rights, and it was specifically denied that they had any registration or were entitled to the water from time immemorial or by custom or prescription as alleged. p. 8, l. 27. p. 10, l. 9

RECORD.

The Counterclaim was "to have all title deeds, Imperial Firmans and Ilams of the Sheri Court, which may in any way affect the rights of the Defendants, set aside and/or amended accordingly so as to give real effect to the rights of the Defendants."

p. 10

11. There was a formal Reply and Defence to the Counterclaim, joining issue upon the Defence and denying that the Defendants were entitled to their Counterclaim.

12. The trial before the District Court of Nicosia took place on the 17th, 18th and 19th May and the 21st, 22nd, 23rd, 25th and 26th June 1948.

pp. 11-36, 46-48, 50-57.

13. The Respondents called as witnesses a number of persons who as 10  
waterguards or landowners of Petra, Evrykou or Korakou had, for many years up to 1941, gone to the upper dams and sluices (Frantziko and the others) and made sure that at the proper times the water ceased to be diverted on to the lands of the upper villages (Kakopetria, Galata and Sina Oros) and was directed and continued to flow along the main stream to the area of the middle villages (Evrykou, Tembria and Korakou). Their evidence was direct and detailed and on all major points consistent, and it was corroborated and supplemented by Salim Effendi's Report and Plan (Exhibits 5 and 6) made in the year 1901 and showing the same system in operation at that time. They stated the respective days on which and times at which the water was taken into the channels 20  
of the upper villages, into the channels of the middle villages and into the channels leading to the lowest villages (Petra and Elia). As the dams and sluices are at widely separated points on the course of the stream, there is a time factor which makes the system complicated. But the features of it which are essential for the purposes of the present case can be stated shortly. The 24-hour period is divided into 3 parts (i) from the rising of the relevant constellation (being the Pleiades up to the 28th August (New Style) and thereafter Orion) to sunrise over Mount Troodos (ii) from sunrise over Mount Troodos to what may be called "shadow time," that is the time when a man's shadow attains the appropriate length (being 7 feet at one place, 6 feet at another place and so on) (iii) 30  
from "shadow time" to the rising of the relevant constellation. In a 24-hour period, in which both the people of Kakopetria and the people of Petra are concerned, the sequence of events is broadly as follows:—

pp. 11 etc.  
pp. 265-6.p. 11 etc.  
p. 266.

#### *Rising of constellation.*

In the upper section, the upper villages divert the water from the main streams into their channels (Nos. 1—9 in Salim Effendi's Report and Plan). If there is an overflow of water over the dams and along the main streams, this overflow goes down to the middle section.

In the middle section, any water that is coming down is taken wholly or mainly by the middle villages into their channels (Nos. 40  
10—12 and 14 in Salim Effendi's Report and Plan); the channels (Nos. 13 and 15) leading down towards the lowest villages are closed or partly closed.



*Sunrise over Mount Troodos.*

RECORD.

In the upper section the channels of the upper villages (Nos. 1—9) are closed, and all the water flows along the main streams into the middle section.

In the middle section, the water coming down is still taken wholly or mainly by the middle villages into their channels (Nos. 10—12 and 14); the channels (Nos. 13 and 15) leading down towards the lowest villages are still closed or partly closed.

*"Shadow time."*

10 In the upper section, the channels of the upper villages (Nos. 1—9) are still closed, so that all the water still flows along the main streams into the middle section.

In the middle section, the water coming down is no longer taken wholly or mainly by the middle villages into their channels (Nos. 10—12 and 14), but is taken wholly or mainly into the channels (Nos. 13 and 15) leading down to the lowest villages, because these channels are now open.

14. According to the Respondents' evidence, both oral and documentary, the times at which the people of Kakopetria and the peoples of Galata and Sina Oros properly take the water through their dams into their channels (Nos. 1—9) are the six night periods beginning with the rising of the relevant constellation and ending with sunrise on the mornings of each day except Tuesday, and in addition the period from sunrise to "shadow time" on Friday; and at all other times the people of Kakopetria, Galata and Sina Oros are not entitled to divert the water and the water guards of the interested lower villages (including Petra on Tuesdays, Wednesdays, Saturdays and Sundays) are entitled to watch over and if necessary regulate the operation of the upper dams, channels and sluices so as to secure the uninterrupted passage of the water along the main streams towards the lower villages.

30 The Respondents' right, as proved by the evidence, is to have at their proper sluices in the middle section of the river system at their proper times, that is to say from "shadow time" to the rising of the constellation on Tuesdays, Wednesdays, Saturdays and Sundays, a full flow of water undiminished by any taking of water by the people of Kakopetria in the upper section of the river system outside their permitted hours on those days, that is to say after sunrise. A wrongful taking of water in the upper section would diminish the flow in the middle section some hours later.

15. The Respondents' witnesses proved that in May 1941 their water-guards were driven away from the upper section of the river system by the people of Kakopetria and that from that time onwards the Respondents were prevented by the people of Kakopetria from exercising any control or supervision at all over the taking of water by the people of Kakopetria; and that there were occasions after May 1941 when the people of Kakopetria took all the water from the upper section into their channels, leaving no water to flow down and become available for the Respondents.

p. 11 etc.  
pp. 265-6.pp. 12, 23, 25,  
26.pp. 14-15,  
47-48.

RECORD.  
pp. 40-42,  
pp. 109-110,  
pp. 124-125,  
p. 252.

16. As has been previously mentioned, objection was taken on behalf of the Appellants to the admission in evidence of Salim Effendi's Report and attached Plan (Documents 5 and 6). These were held to be proved as documents because they were ancient and produced from proper custody, and to be admissible in evidence on two grounds, namely

- (a) as public documents, under the law and rules of evidence as in force in England on the 5th day of November 1914, which are, except as otherwise provided, applicable in Cyprus under Section 3 of the Evidence Law, 1946, and
- (b) under Section 4 of the Evidence Law 1946, of which sub-sections 10 (1) to (5) inclusive are in all respects material to the present appeal identical with Section 1 of the Evidence Act, 1938, of England.

1 & 2 Geo. VI,  
C. 28.

It is submitted that the said Report and Plan were properly admissible on each of those two grounds.

p. 40, ll. 5-15

It was proved by the evidence of the Land Registry Clerk of Nicosia (Christakis Savvides) that Salim Effendi's enquiry and resulting Report and Plan were made under the Revenue Survey Law, 1880 (No. 5 of 1880), and that he was a surveyor of the Land Registry Office, and that he had died, and that the file of the enquiry, including the Report and Plan, had been kept since the date thereof in the office of the Director of the Land Registry, and that the preparation of the Plan was part of Salim Effendi's duties after carrying out the enquiry, and that it was part of his duty to prepare both the Plan and the Report.

p. 41, l. 30.

p. 262, l. 31.

p. 264, l. 1.

p. 265, ll. 5-15.

The Report itself shows that it was made in compliance with instructions from the Registrar General, and that, although the Petra water was never assessed for Verghi (land tax), the lands irrigated by it were so assessed at a higher rate than those not irrigated by this water, and that the Report was concerned with and would affect the assessment of the lands so irrigated.

The values of the water rights of the individual landowners in Petra, enhancing the assessments of their lands, necessarily depended upon the existence and nature of the irrigation scheme affecting the Karkotis river system as a whole and determining the quantities that would flow down and become available for the people of Petra. Therefore it was within the scope of Salim Effendi's duties in holding the said enquiry and making his Report in compliance with the said instructions to investigate and describe the said irrigation scheme. And it is a proper inference from the contents of the Report and its attached Plan and from the facts proved in the evidence of the Land Registry Clerk that Salim Effendi had personal knowledge of all or some of the matters dealt with, including at least (i) the physical lay-out of the streams, dams, channels and sluices shown in his Plan, and (ii) the existence and nature of the said irrigation scheme affecting the Karkotis river system as a whole and dependent for its operation upon the taking of water by each village at its own fixed times and not at other times.

17. Further corroboration of the evidence of the Respondents' witnesses and of the Respondents' case generally was afforded by other documentary evidence, especially entries in the Land Registry, showing that certain inhabitants of Petra were entitled to water rights connected with the "Karkot River of Troodos" or "the Karkod River having its source from the spring on Troodos." pp 270, 271, etc.

18. (a) The general effect of the evidence given by the Appellants' witnesses as to the taking of water by the people of Kakopetria was that they took it at any time of the day or night to the full extent of their own requirements, even if little or no water were left to flow down to the other villages. For instance, Yiannis Vassiliou said: "We do not measure the quantity of water. We just put in the channel as much as we need. When the water diminishes very much, then we will take as much as we require. If we require the whole lot then we take it." Later he said "Kakopetria people are entitled to irrigate every day. Kakopetria village is high up and has the right to irrigate whenever it likes." Hambis Makris said "We, the Kakopetria people, can irrigate whenever we like day or night. We are not watching signs in the sky in order to irrigate. . . . In dry years we irrigate our lands as much as they require. We are entitled to take as much water as our property requires." Later he said "Since the water is running under our nose we should take it." pp.57, 58 etc.  
p. 71, ll. 3-12  
pp. 133,  
ll. 4-10,  
234, ll. 6-10  
p. 66, ll. 30  
33.  
p. 67, ll. 19-20  
p. 73, ll. 27-29  
ll. 48-50  
p. 75, ll. 30-40

(b) Some of the Appellants' witnesses made important admissions, confirming a large part of the evidence of the Respondents' witnesses. They admitted that the people of Galata and Sina Oros took water only at fixed times, and those fixed times were as stated by the Respondents' witnesses; and that lower villages also used the water; and that the lower villages sent up water guards to the area of the upper villages to supervise the operation of the Vasiliko and Kapathokas dams and to "cut the water" at the proper time. In the evidence of the Appellants' witnesses there was no denial and a good deal of confirmation of the existence of a system of allocation of the water of the Karkotis river system, whereby each village subject to the system had fixed times for taking water, and there was no suggestion that any village except Kakopetria was exempt from the system. Thus according to the evidence of the Appellants' witnesses Kakopetria was in a unique and highly privileged position—which is improbable. pp. 58-60, 76, 86.  
pp. 59, 76, 86, 87.  
pp. 58-60, 82, 86, 87, 95.

(c) The evidence of the Respondents' witnesses as to the events of May 1941 was not denied by any of the Appellants' witnesses and was in some respects confirmed by one of them, namely Thrassyvoulos Ioannou. p. 82. ll. 7-21.

19. In the course of the argument in the District Court the Appellants' Counsel made this admission:—

40 "People of Kakopetria admit to-day that the Petra people are entitled to take water from the river Karkotis reaching Petra; they have rights, we do not dispute them, but we say that their rights cannot commence from any point before the water reaches Karkotis." p. 108. ll. 32-35.

When he said "Karkotis," he meant the lower stream below the bridges. But when this admission has been made, the question arises whether the people of

RECORD. Kakopetria could reasonably be supposed to be entitled by ancient usage to take water from the streams above the bridges to such an extent as to nullify and render illusory the admitted right of the people of Petra to take water from the stream below the bridges. In comparing the evidence of the Respondents' witnesses and the evidence of the Appellants' witnesses in respect of probability, the general principles of Cyprus law referred to in paragraph 3 hereof are not unimportant.

p. 119. 20. The District Court gave a reserved judgment on the 6th November 1948. In the course of their judgment they said (*inter alia*):—

p. 120, l. 49. “Indeed it would have been difficult for the Court to arrive at a 10 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 . . .”

p. 121, l. 23. “In our view there is strong corroborative evidence to establish the claim of the Plaintiffs in this case . . .”

p. 123, l. 22. “In our view all these descriptions of Petra water in the title 20 deeds, registers, field books, etc., go to establish the assertion of the Plaintiffs that their right of water is not limited to what is left running below Kakopetria village but it attached the volume of water coming from the sources above Kakopetria and flowing in Ayios Nicolaos which is part of river Karkotis.”

p. 262.  
p. 125, l. 10. (As to Salim Effendi's Report and Plan). “It was surveyor's part of duty to make a comprehensible report about the water rights of Petra village including division and turn for taking water from various dams and in doing so he gave a detailed account of the irrigation system in which a group of villages starting from Kakopetria down- 30 wards were interested. Petra is one of the villages included in the group. Exhibit 6, though a sketch, read along with the reference, illustrates the system of irrigation from Kakopetria downwards. That being so, in our view what we find in the reference carries weight and we may legitimately take consideration as corroborative of the oral evidence given in this case.”

p. 126, l. 45. “We agree with the contention of the Counsel of the Defendants that the Plaintiffs had to make up their case even if Defendants were trespassers, but in our view they established their case and the rights to the water from Frantziko, Ayios Nicolaos, Apliki and Karydhi dams 40 to the exclusion of Kakopetria people during the hours they claim.”

p. 127, l. 12. “In the circumstances we find that Plaintiffs are entitled to an injunction as per paragraph 12 (A) of the Statement of Claim with costs of the action in their favour.”

21. The Appellants gave notice of appeal dated 17th December 1948. RECORD.  
p. 127.

22. The arguments on appeal were heard on the 9th and 10th March, 1950, and the evidence of the witness who produced and proved the new plan (Exhibit A, referred to in paragraph 6 hereof) was taken on the 29th March, 1950. p. 129, etc.  
p. 237.

23. The Supreme Court gave a reserved judgment on the 6th April, 1950. p. 248.  
In the course of their judgment they said (*inter alia*):—

10 “ Along the whole length of this river system, both above and below the Defendants’ village of Kakopetria, an exceedingly intricate organisation of dams, channels and sluices has been constructed in the course of very many years and by this means water for irrigation is led to the lands of the Plaintiffs and of the Defendants and of all the vil-  
lages that lie between. One would naturally suppose that if all the irrigable lands that lie along this river system, over a length of 12 miles or more, are to share in the water that flows down it, a very elaborate scheme would have to be devised and followed, in order that those whose lands are irrigated from any particular point in the river system may know when their turn to take the water has arrived and how long it lasts. One would also suppose that, while in good years there might be plenty of water in which everyone could share, it would be in dry years that the scheme of allocation would be put to the test and that cultivators along the lower reaches of the river might find themselves in difficulties. So it was in this case and the disputes arose out of conditions that occurred in the summer of 1941.” p. 248, l. 45  
to p. 249.  
l. 11.

20 “ They ” (the trial Court) “ held, also, that the rights of the Plain-  
tiffs to the water of the main river, Karkotis, extended also to the water in the tributaries, including the water of the Karvounas. That was an important finding and went to the root of the matter, for it made it unnecessary to determine where the true source of the Karkotis is or whether the Ayios Nicolaos is really the Karkotis or not.” p. 250, l. 47.

30 “ The finding that the Plaintiffs had the *ab antiquo* rights that they claimed was based both on oral evidence for the Plaintiffs which the trial Court believed and on documentary evidence.” p. 252, l. 25.

“ To much of the latter evidence the advocate of the Defendants, as we have said, objected. 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 . . . . .”

40 “ We think . . . 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 ” p. 262, l. 42.

“ We are accordingly of the opinion that we have no sufficient reason to differ from the findings of fact made by the trial Court upon

RECORD.

which they based their conclusion that the Plaintiffs had established the *ab antiquo* rights that they claimed.”

p. 253, l. 10. The Supreme Court, subject to a minor alteration of the wording of the injunction, dismissed the appeal.

pp. 257, 258.

24. Conditional leave to appeal to His Majesty in Council was granted by an Order dated the 13th May, 1950, and final leave was granted by an Order dated the 3rd August, 1950.

25. The Respondents humbly submit that the decision of the Supreme Court of Cyprus affirming in substance the decision of the District Court of Nicosia is right and should be affirmed and this appeal should be dismissed for 10 the following amongst other

## REASONS.

(1) BECAUSE the question at issue is a question of fact as to the nature of the ancient usage, and on this question there are concurrent findings in favour of the Respondents;

(2) BECAUSE the Respondents' version of the ancient usage is, and the Appellants' version of it is not, in accord with the general principles of Cyprus law relating to the use of the waters of rivers for the purposes of irrigation;

(3) BECAUSE the probabilities are in favour of the 20 Respondents' version of the ancient usage and against the Appellants' version;

(4) BECAUSE the Respondents' version of the ancient usage was proved by the oral evidence of the Respondents' witnesses which was accepted by the trial Court;

(5) BECAUSE the evidence of the Respondents' witnesses was in many important respects corroborated by the evidence of the Appellants' witnesses;

(6) BECAUSE the evidence of the Respondents' witnesses was corroborated by numerous documents; 30

(7) BECAUSE each of those documents was properly admitted in evidence and taken into consideration;

(8) BECAUSE the said decision was right for the reasons given by the District Court and the Supreme Court in their judgments.

COLIN H. PEARSON.  
J. C. CLERIDES.  
KENNETH POTTER.

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 of Kakopetria (Defendants) - *Appellants*

AND

PAPA CHRISTOFOROS DEME-  
TRIOU and Others of Petra (Plaintiffs) *Respondents*

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**Case for the Respondents.**

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BISCHOFF & CO.,

4, Great Winchester St.,

E.C. 2.