

30, 1951

UNIVERSITY OF LONDON
W.C. 1
No. 007 of 1950.
INSTITUTE OF ADVANCED
LEGAL STUDIES

In the Privy Council.

ON APPEAL

11960

FROM THE SUPREME COURT OF CYPRUS.

BETWEEN

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

PAPA CHRISTOFOROS DEMETRIOU,
TOFIS PAPA GEORGHIOU,
CHRISTODOULOS HJI YIANNI,
EMILIOS N. KAMENOS,
MEHMED RAIF HADJI MULLA ALI,
APHRODITI GEORGHIOU,
CHARALAMBOS I. EFTHYMIOU,
NEOFYTOS KAROLIDES,
PERIKLIS DEMETRIOU,
NEOFYTOS PAPA GEORGHIOU,
MARITSA NEOFYTOU,
CHRISTOS MICHAELIDES,
PAPA GEORGHIOS TOFI,
CHRISTOS CONSTANTI,
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,
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,
FROSSA N. KAMENOU,
CHRISTOD. PAVLOU,
CHAR. M. KALLOURI,
PAVLOS M. KALLOURI,
IOANNIS ANASTASI,
ANTONIETTA PAVLOU,
YIANNIS KLEANTHI DEMETRI,
ASINETTA GEORGHIOU,
THEODOSIS CHARALAMBOUS,
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,
EFROSYNI CHRISTODOULOU,
MARIKOU LAMBI,
MICHAEL Y. KALLOURI,
CONSTANTIS SARAFIS,
GEORGHIOS DEMETRI,
LOIZOS Y. ELIOTI,
AGATHI CH. KOURTELLI,
MARIKOU PAVLOU,
ELLI M. KOLESIDOU,
ZOE IORDANOUS,
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,
 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,
 NEDHI KAMENOU,
 ESDMONDI N. KAMENOU,
 ANDREAS N. KAMENOS, and
 CHRISTODOULOS LEVENTIS,
 all of Petra (Plaintiffs)

Minors through their mother
 guardian and next friend FROSSO
 N. KAMENOU of Petra

- - - - - Respondents.

RECORD OF PROCEEDINGS

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In the Privy Council.

ON APPEAL FROM THE SUPREME COURT OF CYPRUS.

BETWEEN

THRASYVOULOS IOANNOU of Kakopetria, personally
and as representing THE PROPRIETORS OF THE IRRIGA-
TION DIVISION OF KAKOPETRIA and others (Defendants) *Appellants*

AND

10 PAPA CHRISTOFOROS DEMETRIOU of Petra and
others (Plaintiffs) - - - - - *Respondents.*

RECORD OF PROCEEDINGS

No. 1.

WRIT OF SUMMONS.

IN THE DISTRICT COURT OF NICOSIA.

Action No. 895/1941.

Between

- 1. PAPA CHRISTOFOROS DEMETRIOU
- 2. TOFIS PAPA GEORGHIOU
- 20 3. CHRISTODOULOS HJI YIANNI
- 4. EMILIOS N. KAMENOS
- 5. MEHMED RAIF HADJI MULLA ALI
- 6. APHRODITI GEORGHIOU
- 7. CHARALAMBOS I. EFTHYMIU
- 8. NEOFYTOS KAROLIDES
- 9. PERIKLIS DEMETRIOU
- 10. NEOFYTOS PAPA GEORGHIOU
- 11. MARITSA NEOFYTOU
- 12. CHRISTOS MICHAELIDES
- 30 13. PAPA GEORGHIOS TOFI
- 14. CHRISTOS CONSTANTI
- 15. HARICLIS PAPA CHRISTOFOROU
- 16. YIANNIS G. KOUSPOU
- 17. MEHMED TEWFIK MOUSTAFA
- 18. ILARIOS IOANNOU
- 19. IOANNIS ARGHYROU
- 20. NEOKLIS PAVLOU

*In the
District
Court of
Nicosia.*

No. 1.
Writ of
Summons,
26th
September
1941.

*In the
District
Court of
Nicosia.*

No. 1.
Writ of
Summons,
26th
September
1941,
continued.

- | | | |
|-----|---|----|
| 21. | THEOCHARIS KARAOLIDES | |
| 22. | A. KARAOLIDES, minor, through his brother
guardian and next friend NEOFYTOS KARAOLIDES | |
| 23. | MICHAEL ANASTASI | |
| 24. | NEOFYTOS IOANNOU | |
| 25. | MICHAEL SERAPHIM | |
| 26. | MARITSA HADJI YIANNI | |
| 27. | ELENI THEOCHAROUS | |
| 28. | CHARAL. K. CHARALAMBIDES | |
| 29. | ANDRONIKI KYRIACOU | 10 |
| 30. | ELPINIKI CHRISTOFOROU | |
| 31. | MARITSA LOIZOU | |
| 32. | SOFIA KYRIACOU | |
| 33. | FEVRONIA LOIZOU | |
| 34. | KATINA KYRIACOU | |
| 35. | ISMINI HIMONA | |
| 36. | THEODOROS LOUCA | |
| 37. | ELENI PAVLOU | |
| 38. | CHAR. ARGHYROU | |
| 39. | FROSSA N. KAMENOU | 20 |
| 40. | CHRISTOD. PAVLOU | |
| 41. | CHAR. M. KALLOURI | |
| 42. | PAVLOS M. KALLOURI | |
| 43. | IOANNIS ANASTASI | |
| 44. | ANTONIETTA PAVLOU | |
| 45. | YIANNIS KLEANTHI DEMETRI | |
| 46. | ASINETTA GEORGHIOU | |
| 47. | THEODOSIS CHARALAMBOUS | |
| 48. | POLYKARPOS CH. KARAOLIDES | |
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| 51. | ATHINA HADJI NICOLA | |
| 52. | PHINIKOU MICHAEL | |
| 53. | GEORGHIOS HJI DHAVID | |
| 54. | CLEODHORA CHRISTODOULOU | |
| 55. | MEROPI HADJI YIANNI | |
| 56. | HADJI HARALAMBOS KOURIDES | |
| 57. | HADJI PARASKEVOU K. KYRILLOU | |
| 58. | EFROSYNI CHRISTODOULOU | |
| 59. | MARIKOU LAMBI | 40 |
| 60. | MICHAEL Y. KALLOURI | |
| 61. | CONSTANTIS SARAFIS | |
| 62. | GEORGHIOS DEMETRI | |
| 63. | LOIZOS Y. ELIOTI | |
| 64. | AGATHI CH. KOURTELLI | |
| 65. | MARIKOU PAVLOU | |
| 66. | ELLI M. KOLESIDOU | |
| 67. | ZOE IORDANOUS | |
| 68. | CHARAL. G. KALLOURI | |
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| 70. | MICHAEL PAVLOU | |
| 71. | KYRIACOS KYRIAKIDES | |

In the
District
Court of
Nicosia.

No. 1.
Writ of
Summons,
26th
September
1941,
continued.

- 72. ELIAS ILARION
 - 73. ATHENA MICHAEL
 - 74. GEORGHIOS LOUCA
 - 75. YANNI PELEKANOS
 - 76. IFIGHENIA KARAOLIDOU
 - 77. YANNIS M. KALLOURIS
 - 78. MEHMED ALI SOULEIMAN
 - 79. PINELOPI L. SERGHIDOU
 - 80. THEODORA KOURTELLI
 - 10 81. DOROTHEA KYRIAKIDOU
 - 82. ANTIGONI H. ELIADOU
 - 83. AGATHI IOANNOU
 - 84. NICOLAS P. SAVVIDES
 - 85. SALIH NAIM
 - 86. KLEONIKI MICHAEL
 - 87. CHARALAMBOS PAVLOU
 - 88. LOUCAS PAVLOU
 - 89. OSMAN TALAT of Lefka for PETRA MOSQUE
 - 90. ANNA IACOVOU
 - 20 91. IOANNIS K. MYRLANTHOUSIS
 - 92. ANASTASSIS LEVENTIS
 - 93. FROSA N. KAMENOU
 - 94. RENOS N. KAMENOS
 - 95. DOROS N. KAMENOS
 - 96. DIRANDI N. KAMENOU
 - 97. NEDHI KAMENOU
 - 98. ESDMONDI N. KAMENOU
 - 30 99. ANDREAS N. KAMENOS
 - 100. CHRISTODOULOS LEVENTIS
- all of Petra - - - - - Plaintiffs

Minors through their
mother guardian and
next friend FROSSO N.
KAMENOU of Petra

and

- 1. THRASYVOULOS IOANNOU of Kakopetria,
personally and as representing THE PROPRIETORS
OF THE IRRIGATION DIVISION OF KAKOPETRIA
- 2. PHILOTHEOS STAVROU of Troodos
- 40 3. HARALAMBOS VIOLARIS of Kakopetria
- 4. IOANNIS VASSILIOU of Kakopetria
- 5. HERODOTOS KAZANOS of Kakopetria
- 6. CHRYSTALLOU HARALAMBOUS of Kakopetria Defendants.

To the above Defendants.

This is to command you that within ten days after the service of this writ you enter an appearance in an action against you by the above Plaintiffs.

The Plaintiffs' claim in the action is set out in the indorsement overleaf.

*In the
District
Court of
Nicosia.*

No. 1.
Writ of
Summons,
26th
September
1941,
continued.

The Plaintiffs' address for service is the Office of Paschalis and Clerides, Advocates, Ankara Street, Nicosia.

And take notice that in default of your entering an appearance in the manner specified below the Plaintiffs may proceed in the action and judgment may be given in your absence.

Filed and sealed on the 26th September, 1941.

(Signed) PASCHALIS & CLERIDES,

Advocates for Plaintiffs.

(Signed) M. NAZIM,

Assistant Registrar.

10

N.B.—An appearance may be entered either personally or by advocate by delivering to the Registrar at Nicosia a memorandum of appearance, and on the same day by delivering at the Plaintiffs' address for service a duplicate of such memorandum dated, signed and sealed by the Registrar.

Indorsement of Claim.

The Plaintiffs' claim is :—

1. For an injunction restraining the Defendants, their agents and servants from in any way unlawfully interfering with the water, and/or the Plaintiffs' rights 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 " Vroktos " at Tembria six feet, and/or at the dam and/or locality " Sanidi Korakous " at Korakou seven feet, to the rising of the Pleiads (Plías) 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. 20 30

2. For the sum of £700 as damages for the loss and injury caused to the Plaintiffs by the Defendants' unlawful interference with the water and/or right described above and for the sum of £10.0.0 as damages for each day hereafter the said interference continues.

3. For legal interest from to-day on the above sums and the costs of this action.

26.9.41.

(Sgd.) PASCHALIS AND CLERIDES,

Advocates for Plaintiffs.

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No. 2.

STATEMENT OF CLAIM.

*In the
District
Court of
Nicosia.*

No. 2.
Statement
of Claim,
16th
October
1943.

1. The Plaintiffs mentioned in the writ of summons and in the attached thereto list, are all inhabitants of the Village Petra and owners of fields irrigable from the waters of the rivers "Karvouna" "Ayios Nicolaos" and "Karkotis."

2. The Defendants are inhabitants of the village Kakopetria.

3. The waters of the rivers "Karvounas" "Ayios Nicolaos" are joined near the village Kakopetria and form the river Karkotis the water of which passes through several dams the principal ones being the dams "Ayios Nicolaos" "Frantziko" and "Karidia" all situate at or in the vicinity of the village Kakopetria.

4. By virtue of title deeds, Imperial Firman, Ilams of the Sheri Court, the water of the rivers "Karvounas" and "Ayios Nicolaos" and their continuation the river Karkotis belongs to the Plaintiffs and/or the Plaintiffs 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 (plias) from the beginning of May to the 28th August and to the rising of Orion (poaletri) from the 28th August to the beginning of May each year.

5. The Plaintiffs and/or their predecessors in title have been irrigating their animals, fields, trees and gardens at Petra continuously and from time immemorial.

6. For the purpose of reaching the village of Petra the said water passes through several dams the principal ones being the dams of "Ayios Nicolaos" "Frantziko" and "Karidia" all situate at or in the vicinity of the village of Kakopetria.

7. On the 27th and 28th May, 1941, the Plaintiffs' watermen Michael Anastasi and Polis Tsingis, and Ilarion Ioannou and Polis Tsingis respectively 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 or their co-villagers' gardens or other properties.

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.

*In the
District
Court of
Nicosia.*

No. 2.
Statement
of Claim,
16th
October
1943,
continued.

9. 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. The minimum damage caused to the Plaintiffs' properties each day they are deprived of the water is £10.0.0.

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 10 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.

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.

12. For all the above stated reasons the Plaintiffs brought this action 20 by which they claim :

(The claims made in this paragraph are the same as those made in the Indorsement of Claim, paragraphs 1, 2 and 3. See page 4 of this Record.)

Dated the 16th day of October, 1943.

(Sgd.) S. G. STAVRINAKIS.

PASCHALIS AND CLERIDES,

Advocates for Plaintiffs.

No. 3.
Statement
of Defence
and
Counter-
claim, 29th
May 1944.

No. 3.

STATEMENT OF DEFENCE AND COUNTER-CLAIM.

30

1. Defendants admit the 1st paragraph of the Statement of Claim, with the exception that the Plaintiffs are owners of fields irrigable from the water of the rivers "Karvouna," "Ayios Nicolaos" and "Karkotis."

Defendants further allege that Plaintiffs if owners of irrigable fields they are entitled to make use only of "Karkotis" river water.

2. Defendants admit the 2nd paragraph of the Statement of Claim.

3. With regard to the 3rd paragraph of the Statement of Claim, Defendants admit that "the water of the rivers 'Karvounas' and 'Ayios Nicolaos' are joined near the village Kakopetria and form the river 'Karkotis,'" but they allege that the water which is cut by the dams 40 "Ayios Nicolaos" and "Frantziko" is taken from the river "Ayios Nicolaos" and the water which is cut by the dams "Karidia" and "Aplidji" is taken from the river "Karvounas," before the said two rivers join together to form the river "Karkotis."

4. Defendants deny the 4th paragraph of the Statement of Claim and they allege that the true facts are as follows :—

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(A) There is always water running in the rivers " Karvounas," " Ayios Nicolaos " and " Karkotis."

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10 (B) 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.

The people of Kakopetria irrigate about 240 donums.

If it was possible to use the whole quantity of water running in the rivers " Karvounas " and " Ayios Nicolaos " by cutting and conducting it through the dams of " Karidin," " Aplidji," " Ayios Nicolaos " and " Frantziko," 10 hours per week would have been sufficient to irrigate all the 240 donums and make use of it as set out hereinbefore.

20 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.

(C) The owners of land within the boundaries of Kakopetria were and are taking the said quantity of water as set out hereinbefore from the river " Karvounas " through the dams of " Karidi " and " Aplidji " and from the river " Ayios Nicolaos " through the dams of " Ayios Nicolaos " and " Frantzika."

(D) That all channels, through which the said water passes after it is diverted by the said 4 dams, were opened and built by the Kakopetria owners of land.

30 The said channels were from time immemorial and are now cleaned, repaired and are kept in good workable condition by the inhabitants of Kakopetria.

(E) When the inhabitants of Kakopetria make use of the said quantity of water, which is in any event proportionate to their irrigable lands, the remaining surplus is carried back again into the said two rivers " Karvounas " and " Ayios Nicolaos " below and near the point where they join to form the river " Karkotis."

40 (F) From the points where the water is taken by the said dams from the rivers " Karvounas " and " Ayios Nicolaos " up to the point where the said rivers join and form the river " Karkotis " and within the boundaries of the village of Kakopetria, there is a number of water springs, the water of which joins the water of the rivers " Karvounas " and " Ayios Nicolaos " and which water belongs exclusively to the inhabitants of Kakopetria or to some of them.

(G) The quantity of water which flows from the said water springs and which ultimately is carried into the said rivers, after

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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.

(H) There is always water flowing in the rivers "Karvounas" "Ayios Nicolaos" and "Karkotis" and Plaintiffs can make use of their rights from the said water.

(I) Defendants deny that Plaintiffs and/or any of them are, by virtue of title deeds, Imperial Firmans, Ilams of the Sheri Court 10 and/or otherwise, the owners or are entitled to make such use of the water of the rivers "Karvounas" and "Ayios Nicolaos" and their continuation the river "Karkotis," as to interfere with the rights of the Kakopetria people as set out hereinbefore.

In any event 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.

The said title deeds, Imperial Firmans, Ilams of the Sheri Court— even if in existence—regulate the rights of Plaintiffs with other people who are entitled to make use of the water flowing in the said 3 rivers after 20 Defendants exercise their rights, i.e. after they take proportionate water for their irrigable fields.

If otherwise, Defendants counter-claim to have the said title deeds, Imperial Firmans and Ilams of the Sheri Court set aside and/or amended accordingly, so as to give real effect to the rights of the Defendants as set out hereinbefore.

Defendants deny that Plaintiffs or any of them have any ab antiquo rights.

Further and in the alternative Defendants allege that even if such title deeds, Imperial Firmans and Ilams of the Sheri Court exist, they 30 cannot affect Defendants, because Defendants were exercising their rights as above from time immemorial and/or in accordance with the Law and/or of the judgments of the Supreme Court.

5. Defendants deny the 5th paragraph of the Statement of Claim and they allege that Plaintiffs if they had such rights they were exercising same after Defendants were making use of the water flowing in the said rivers as set out hereinbefore.

Defendants further allege that even when they make the utmost use of the water flowing in the rivers "Karvounas" and "Ayios Nicolaos" they use only the proportion of water to which they are entitled, including 40 the water which comes on the surface from the said water springs as above set out, which is proportionate to the area of irrigable land belonging to the village of Kakopetria.

6. Defendants deny the 6th paragraph of the Statement of Claim and they allege that Plaintiffs are using the water for irrigating their fields after same reaches the river "Karkotis."

Defendants further allege that the dams of "Ayios Nicolaos" and "Karidi," as well as all water channels and ditches from the point they touch the said dams up to the point the water flows again in any of the said 3 rivers, belong exclusively and are kept up by Defendants and are being used only by the people of Kakopetria in order to irrigate their fields and for their other needs, as set out hereinbefore.

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In any event Plaintiffs cannot use the water flowing in the said dams. After Kakopetria and before the water reaches Petra there are many other dams which belong to other villages.

- 10 7. With regard to the 7th paragraph of the Statement of Claim, Defendants admit that on the 27th and 28th May, 1941, they made use of the water running through the channel (dam) of "Frantziko," but they deny that they made use of the whole water flowing in the said channel.

Defendants further allege that they made use of part of the water running through the said dam in accordance with their rights and in any event after they have used the required quantity of water, the remaining quantity reached ultimately the river bed to be used by other villages including the Plaintiffs, whose lands are further down than the lands of the Defendants.

Defendants deny the other part of the 7th paragraph of the Statement of Claim.

8. Defendants deny the 8th paragraph of the Statement of Claim and they allege that what they told Plaintiffs was that they were going to make use of the water in accordance with their rights and always there would be surplus water.

9. Defendants deny the 9th paragraph of the Statement of Claim and they allege that there was water running every day through the "Karkotis" river from the 27th May, 1941, and onwards and Defendants deny that they prevented Plaintiffs of making use of same.

Defendants further allege that even if Plaintiffs did not take a single drop of water, as alleged, this was not due to any action on their part.

Defendants further allege that on various dates and particularly on the 16th July, 1941, and on the 6th August, 1941, a certain H.j. Charalambo Yianni Pomilorides of Ghalata has bought part of the water flowing in the river "Karkotis" from Plaintiff No. 62 i.e. Georghios Demetri, and that other persons bought water from other Plaintiffs on various dates.

Defendants deny that any damage whatsoever was caused to Plaintiffs or any of them as alleged in their Statement of Claim and/or that Defendants or any of them are responsible for any damage, if any.

Defendants further and in the alternative allege that the year 1941 was an exceptionally dry year. During that year and especially during the months of April to September, both inclusive, all running water including the water running in the said 3 rivers was greatly diminished in volume.

Therefore even if Plaintiffs have suffered any damage, this is not due to any act on the part of the Defendants or any of them but to the exceptionally dry season or to acts of other persons.

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10. Defendants deny the 10th paragraph of the Statement of Claim for the facts set out hereinbefore.

11. Defendants deny the 11th paragraph of the Statement of Claim and they allege that in any event the facts alleged therein are irrelevant and the said paragraph was inserted in the Statement of Claim in order to prejudice Defendants, and they repeat that Defendants take only such water to which they are entitled.

12. Defendants, for the facts set out hereinbefore, deny the 12th paragraph of the Statement of Claim and specifically they deny that Plaintiffs have any registration or that they are entitled to the water 10 from time immemorial or by custom or prescription as alleged, as well as damages and amount.

COUNTER-CLAIM.

1. Defendants repeat all facts contained in their Statement of Defence and particularly the facts contained in paragraph 4 and counter-claim 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.

2. Defendants claim the costs of the counter-claim.

For the Defendants,

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(Sgd.) G. CHRYSSAFINIS,
G. ROSSIDES,

Advocates.

29th May, 1944.

No. 4.
Reply and
Defence to
Counter-
claim, 3rd
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No. 4.

REPLY and DEFENCE to the Counter-claim.

1. Plaintiffs deny generally the Defence and join issue with the Defendants upon their Defence.

2. Plaintiffs also deny that they are entitled to their Counter-claim. That all title-deeds Imperial Firmans and Ilams of the Sheri Court be set 30 aside and/or amended in any way.

(Sgd.) S. G. STAVRINAKIS.

PASCHALIS AND CLERIDES,

Advocates for Plaintiffs.

3.6.44.

EVIDENCE of Michael Anastassi (Witness No. 1).

17th May 1948.

Before FULL COURT.

M. ZEKIA, P.D.C., and N. PIERIDES, D.J.

Mr. J. Clerides and Mr. Indianos for Plaintiffs.

Mr. M. Houry, Mr. Hadji Pavlou and Tavernaris for Defendants.

Shorthand notes of proceedings ordered to be taken.

9.15 a.m.

10 MICHAEL ANASTASSI, sworn.

I am 75 years old. I am one of the persons entitled to Petra water. I had two hours of water. I am a farmer and a water guard. I have been a water guard for 50 years. Petra water comes from Troodos sources. This water comes from springs from two parts of Troodos mountains and coming down they join on a particular spot. One channel is called Karvounas channel and the other channel Karkotis. Karkotis river passes by Ayios Nicolas monastery. The two channels join at the bridge at Old Kakopetria village. The following villages irrigate from this water: Kakopetria, Galata, Sina Oros, Evrykhon, Tembria, Korakou, Flassou, 20 Ayios Epiphanius, Linou, Katydhata, Monasteri, Ay. Georghios, Petra and Elia.

Kakopetria, Galata and Sina Oros irrigate their properties 6 nights every week. Kakopetria is entitled to irrigate from the rising of the Pleiads. Kakopetria irrigates from the dams of Karydhi and Frantziko. They irrigate from 3 dams in Karvounas river, two dams of Karydhi and one of Apliki dam. As regards Ayios Nicolas channel they irrigate from 4 dams; Ayios Nicolas, Frantziko, Vassiliko and Kapadhokas. Kakopetria inhabitants take the water for irrigation purposes from the above-mentioned dams from the rising of the Pleiads to the sunrise. Kakopetria 30 people take the water as I have mentioned earlier in my evidence. On the 28th August we stop at the rising of the Pleiads and we start with the rising of the Orion. From sunrise the following three villages are entitled to irrigate: Evrykhon, Tembria and Korakou. Galata, Kakopetria and Sina Oros after they take the water for irrigation purposes to which they are entitled the surplus water left, to the volume of "Tsappa" is used by the following villages: Evrykhon, Tembria and Korakou. Evrykhon, Tembria and Korakou take the water from sunrise. These 3 villages Evrykhon, Tembria and Korakou are entitled to irrigate their properties from sunrise up to the time when the shadow of a man is 7 feet on the 40 ground; from that time Petra is entitled to get the water. This is for 4 days of the week. Petra takes the water on Saturdays, Sundays, Tuesdays and Wednesdays. When the shadow of a man is 7 feet on the ground. The shadow is measured at the "Sanidhi" (sluice) of Evrykhon when the shadow is 7 feet. Then we the Petra people begin taking the water. The measurement is made at the Evrykhon sluice. Another place from which we take the water is "Sanidhi" of Korakou, at Tembria Sanidhi. At the sanidhi of Korakou we take the water when the shadow is 7 feet. We do not take the water from any other place. I know locality "Vroktos."

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Court: When the shadow is 6 feet at this locality "Vroktos" we divert the water towards the Korakou sluice from where we take the water when the shadow of a standing man is 7 feet. Vroktos locality is above the "Sanidhi tis Korakou." If there is any water in the channel of Vroktos locality we take that water when the shadow is 6 feet. We, Petra People, are entitled to water until the same stops running. The water is cut and taken by the Ayios Epiphanios inhabitants at the rising of the Pleiads. At the rising of the Pleiads Evrykhon, Tembria and Korakou and Kakopetria are entitled to take the water. Sina Oros takes its water at the rising of the Pleiads. Galata, takes its water from the Vassiliko and Frantziko and Kapadhouka dams at the rising of the Pleiads. Petra employs its own water guards. We have four water guards at Tembria, one at Evrykhon and two at Galata. We used to have four water guards at Kakopetria but since the time they prevented us from taking the water we have discontinued employing them. I have worked as water guard guarding the water at Kakopetria. Last time I guarded the water of Kakopetria was 27th May, 1941. I was accompanied by Polis Tsingis on that day. We were guarding the water at Frantziko dam with Polis. While we were there guarding the water the mukhtar of Kakopetria, Philis, came there together with the Committee. They came there and cut the water. They alleged that we were not entitled to take water. It was 2 p.m. about. I do not remember what date of the week it was. It was at the time and day when the water was ours. They made use of the Koftousa point of sluice and instead of the water going down the other river it flowed down to Kakopetria. I said that we were not prepared to quarrel for that and we left. On that day the mukhtar that is the Committee cut the water at the Sanidhi of Frantziko.

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*Cross-
examina-
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XX'nd by Mr. Houry:

Now tell me you know that at Kakopetria, in the village, two rivulets meet there?—A. Yes.

30

Q. The one is the Karvounas and the other Karkotis?—A. Yes.

Q. And this tributary Karvounas loses its name from Kakopetria downwards? From Kakopetria downwards it is called Karkotis the other tributary is Ayios Nicolas tributary?—A. Yes.

Q. And like Karvounas tributary it loses its name, Ayios Nicolas, from Kakopetria downwards?—A. Yes.

Q. So the dam of Frantziko is not in the river Karkotis but in the tributary of Ayios Nicolas?—A. The water comes down Ayios Nicolas river or channel and we take it and divert it at a spot which is known as Koftousa of Frantziko sluice.

40

Q. My question is whether this so-called dam of Frantziko is between the village of Kakopetria and Monastery of Ayios Nicolas?—A. It is between the villages of Kakopetria and Ayios Nicolas Monastery.

Q. So it is in the tributary we have called Ayios Nicolas?—A. Yes, Karkotis.

Q. It is in the tributary which we have named Ayios Nicolas?

Court: Q. Do you agree that there is no Karkotis before the confluence of the two tributaries at Kakopetria?—A. Yes. Ayios Nicolas river we also call Karkotis.

Q. We? Who?—*A.* We the water guards.

Q. It stretches to what distance towards Troodos that river Karkotis from Kakopetria?—*A.* From the “Hionistra” downwards.

XX'n continued: Q. Even at this monastery Ayios Nicolas the tributary Ayios Nicolas branches off again into two other tributaries “Potamos ton Kannouron” and “Kokkinorotsos”? Are they called also Karkotis? Are these streams called Karkotis river yes or no?—*A.* The river coming down Ayios Nicolas and passing by Ayios Nicolas is known as Karkotis.

10 *Q.* Let us stick to the name of Ayios Nicolas from Kakopetria village to Hionistra. Now at that Ayios Nicolas tributary how many dams are there before reaching the village of Kakopetria?—*A.* There may be 100 dams from the mountain down to the village. They are small dams and people take the water in order to irrigate their small gardens.

Q. And they have always existed there?—*A.* No only the main dams were there.

Q. Tell us the main dams?—*A.* In Ayios Nicolas river there are four dams: Ayios Nicolas, Frantziko, Vassiliko and Kapathokas. Vassiliko dam is Karkotis river. Vassiliko dam is after the confluence of the
20 Karkotis river further up. There is the dam of Ayios Nicolas, Frantziko and Kapathokas.

Q. First dam is an ancient dam?—*A.* Yes.

Q. Do you know the area that that dam waters from the old times?—*A.* I have not measured it but the extent is a big one. All the properties irrigate from that dam.

Q. Can you tell us what the rights of the owners of this land which irrigate from Ayios Nicolas dam are?—*A.* They are entitled to take water from the rising of the Pleiads up to sunrise. They are entitled to fill the whole channel.

30 *Q.* Were you present to see how the owners of this land took the water from Ayios Nicolas dam?—*A.* We used to guard the water and we used to give the water to them.

Q. How often were you there to see that the owners of this land did not have unrestricted use of the water?—*A.* We always used to be two water guards. I used to go sometimes to Ayios Nicolas and sometimes my companion used to go there to divert the water.

Q. You yourself, how often did you divert the water from Ayios Nicolas dam?—*A.* For years. I have been a water guard for 50 years.

40 *Q.* Can you say how often you diverted the water from Ayios Nicolas dam into the river of Ayios Nicolas?—*A.* I went many times.

Q. How often?—*A.* I was not a regular water guard there. We, the water guards, used to go there in rotation.

Q. You, yourself, how often you went there and diverted the water into the river?—*A.* I used to go there more than 10 times a year to divert the water of Ayios Nicolas dam. Other water guards used to go there as well.

Q. Who are the water guards who diverted the water?—*A.* Loizos Nicola, Ilarion and other old men who have since died.

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Q. You only remember these two?—A. Yes.

Q. Did anybody see you, yourself, diverting the water into the river?
—A. Yes.

Q. Who saw you, any of the owners there?—A. No, it did not happen.

Q. Did you ever go with any of your companions to divert the water from that dam?—A. I always used to go alone to divert the water. We used to go there in turns.

Q. Are there any works of any significance at that dam of Ayios Nicolas any engineering works or irrigation works?—A. A certain company 10 has constructed some works there for taking the water for its own use.

Q. And this construction is at the dam of which you are speaking or further up?—A. It is below there sideways.

Q. So the dam is higher up the dam which the company has built?—A. Yes, on the one side of the river. It is some years now that I have not visited the place and I cannot remember very well.

Q. Further down we have the Frantziko dam?—A. Yes.

Q. In this Ayios Nicolas dam is there any koftousa of any sort?—A. No.

Q. Then we come to the Frantziko dam on that same tributary of 20 Ayios Nicolas?—A. Yes.

Q. You agree with me that this Frantziko is very ancient dam?—A. Yes.

Q. And it has ancient channels?—A. Yes.

Q. And you know that the system of channels there has been built up sometime at a considerable expense?—A. I do not know what it cost.

Q. You know that there are cement works there?—A. At the time I used to go there the channels were not built with cement.

Q. When did you last visit these channels?—A. It was on the 27th May, 1941. 30

Q. Can you tell Their Honours from Frantziko channels how many donums of garden were irrigated in ancient times from your earlier recollections?—A. I have not measured it but they used to irrigate all the gardens between Frantziko dams and the Karvounas river at the village at the time they were entitled to irrigate.

Q. I will make that clear. Actually Frantziko takes its water from Ayios Nicolas tributary?—A. Yes.

Q. It passes by that fertile valley and throws its water into the Karvounas tributary and whatever surplus water is not used it falls into Karvounas river?—A. Yes, now they let the water flow into Karvounas 40 but before that we used to divert the water.

Q. But it always threw its surplus water into Karvounas tributary always from the ancient times?—A. They would not let it flow. They used to irrigate with that water.

Q. But the surplus water always fell into the Karvounas tributary?—A. When they did not make use of it for irrigating purposes the water flows into Karvounas but there are times when they make use of all the

water and nothing is left to flow down and no drop of water reaches our village.

Q. The channel that conducted the surplus water into Karvounas tributary is a very ancient one?—*A.* Yes.

Q. You know the area of the garden which this Frantziko channels have been irrigating from ancient times?—*A.* Yes.

Q. What is the area, how many donums?—*A.* I have not measured the extent but they used to irrigate the whole area.

10 *Q.* Did it ever come to your notice whether in Kakopetria there was any system for dividing the water amongst the several owners of land that possessed irrigation rights? Was there any system of division?—*A.* Yes, they had a water guard who used to give to them the water which they took from us in order to irrigate.

Q. My question is this. Was there any system of distributing the water that was available during a part of the week?—*A.* The old mukhtar Yiannis used to take the water and distribute it among the Kakopetria inhabitants.

Q. If I ask you what system they applied you do not know?—*A.* No, I do not know.

20 *Q.* I put it to you that at Kakopetria there never was any system of distributing water but every owner was taking such water as necessary to irrigate his land?—*A.* No, Yiannis used to give to them the water. The Kakopetria people were given water in proportion to the extent of their land.

Q. Let us take the other tributary Karvounas before the tributary joins Ayios Nicolas river, how many dams are there along its banks?—*A.* Two at Karydhi and one at Apliki before joining Ayios Nicolas river. I used to go along Karvounas tributary and I used to meet there one Charalambos and another person called Stavris.

30 *Q.* You know the area that has always been irrigated along Karvounas tributary by the Kakopetria people?—*A.* Yes.

Q. And you saw them in 1941?—*A.* Yes.

Q. There was no noticeable increase of land newly put under irrigation along this tributary?—*A.* They used to take the water, I cannot say whether they irrigated any land which was not irrigated before.

Q. But the land at that locality was always irrigated from Karvounas stream? The channels are very ancient channels?—*A.* Yes.

Q. Up to 1941 did you notice the opening of any fresh channels?—*A.* No.

40 *Q.* You know that Ayios Nicolas river before the first dam that there is water coming from the hills of Troodos from the Forest?—*A.* Yes, Kokkinorotsos, Kannoures and water coming from another source used to flow down into Ayios Nicolas river.

Q. You did not go to the sources yourself?—*A.* No, not to Hionistra.

Q. In any way you can tell their Honours that except when it is rainwater accumulated the main water supply that comes to Ayios Nicolas tributary is from sources?—*A.* Yes, both this Ayios Nicolas water and the other one.

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Q. Some of these sources occur in the Government forests?—*A.* I have not been up to the forest.

Q. But you know that from the dam of Ayios Nicolas right down to the confluence, to the place where the two tributaries meet, there are a lot of private sources of water which spring from private lands?—*A.* No.

Q. Of course the Petra village does not claim water of any private sources if they exist along the bank?—*A.* We claim that water.

Q. It was part of your duty to see what private sources exist from Ayios Nicolas dam to Kakopetria along the Kakopetria tributary?—

A. I did not see any water flowing from springs from private property 10 along the channel from Ayios Nicolas down to Kakopetria village along the river.

Q. It was not part of your duty, you did not make it part of your occupation to see that the water of any private sources is let free to fall in the river along that particular tributary?—*A.* No.

Q. About Karvounas stream did you notice that there were also sources springing from land privately owned and the water flowing into the stream?—*A.* I used to follow the course of the river up and I used to see water running from small sources in the river. It is not very outside from the river. It has never been part of the claim of Petra to 20 have the water of the private sources along the Karvounas tributary. If there is such water it belongs to our river.

Court: *Q.* And you claim the surplus?—*A.* Yes, whatever quantity of water there is in the river when our time comes to take water we claim the water.

Q. Now the two tributaries meet in the village of Kakopetria?—*A.* Yes.

Q. Do you want to tell Their Honours that you have been really exercising rights from that point upwards or from that point downwards?—

A. Our title deed says that we are entitled to water from sources from 30 the mountain itself.

Q. Let us leave out the title deeds?—*A.* We were exercising our rights at the time that we were entitled to take the water above the village and we used to divert all the water that would find there up to the place where we guarded the water that I have mentioned.

Q. I put it to you that you never diverted the water from the confluence of the two tributaries upwards?—*A.* Well, where is the Frantziko? Isn't from there that I diverted the water?

*Re-examina-
tion.*

Re-examination by Mr. Clerides:

The water which comes down from Ayios Nicolas irrigates properties 40 situated between the Karkotis and Karvounas river. There are properties situated on the banks of Karvounas river which are not irrigated from the Karvounas water but from the Frantziko water. Frantziko channel in order to irrigate this property reaches as far as this property. When I was a young man in that area there were irrigable fields. These irrigable fields have now been turned into gardens. In those gardens apple trees, pear trees and apricot trees have been planted. They also cultivate summer crops, beans, tomatoes, potatoes, etc.

EVIDENCE of Rodostheni Michael (Witness No. 2).

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RODOSTHENI MICHAEL, sworn.

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Examina-
tion.

I am of Korakou. I am 76 years old. I used to do farming. I have been the mukhtar of my village for a time and I was one of the persons entitled to this water. I had properties which irrigated from the Karkotis river, which I have given to my children but I have one or two pieces still. I used to divert the water since 1890 when I was entitled to this water. The following villages are entitled : Kakopetria, Galata, Sina Oros, Kalliana (One tsappa), Tembria, Korakou, Evrykhon, Flassou, Linou, Ayios Epiphanius, Katydhata, Petra and Elia. At the rising of the Pleiads the following villages are entitled to take water : Kakopetria, Galata, Sina Oros, Kalliana, Evrykhon, Tembria and Korakou. It is not all villages that take their water from the same spot, every village has its own sluice. Kakopetria is entitled to take the water from its dams from the rising of the Pleiads to the time when the sun is over Troodos mountain. Kakopetria is entitled to the water every night except Tuesday night. When we say Tuesday night we mean Monday night towards the sunrise of Tuesday morning and on this night Tembria village is entitled 1/6th of the water in the river the remaining water being taken at Linou village. From sunrise the villages Evrykhon, Tembria and Korakou are entitled to take the water every day in the week. These three villages are entitled to take water until the time when the shadow of a man is 7 feet on the ground when Petra is entitled to take the water. The man's shadow at Vroktos sluice must be 6 feet and at the Evrykhon and Korakou sluice the shadow must be 7 feet. Petra takes the water on the nights of Saturday, Sunday, Tuesday and Wednesday. Elia takes the water on Monday night and Tuesday night.

Q. Who takes the water on Friday night?—A. On Friday night from the rising of the Pleiads to the following morning Kakopetria takes the water. On Friday from sunrise Evrykhon, Korakou and Tembria take the water.

Court (Zekia, P.D.C.): Up to what time?—A. Kakopetria is entitled to have the water on Friday up to the time when a man's shadow is 7 feet.

Q. When does it start?—A. From the rising of the Pleiads.

Examination continued : That is Kakopetria village instead of stopping taking the water at sunrise it continues taking the water up to the time when the shadow of a man is 7 feet at the Frantziko sluice. Kakopetria takes the water from the rising of the Pleiads up to the 15th August, old style calendar, that is up to the 28th August new style. From the 28th August onwards Kakopetria is entitled to get the water from the rising of the Orion.

XX'nd by Mr. Houry :

Q. Can you tell us were you ever present when a man's shadow was measured at Kakopetria?—A. No, but I know that.

Q. What you know is from hearsay?—A. Yes. I was not entitled to get water on Fridays. I did not go there, my co-villagers who were entitled used to go there.

Cross-
examina-
tion.

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No. 6.
Evidence of
Rodostheni
Michael,
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examina-
tion,
continued.

Q. You were actually never present at the diversion of the water from the confluence of the two tributaries upwards?—*A.* No, I did not go on any Friday but I used to go on other days.

Q. On other occasions you said you went, where did you go on what spot?—*A.* To Ayios Nicolas and to a small channel at the Frantziko. I used to go to these two places.

Q. Were you ever present when the water was diverted from the dam of Ayios Nicolas?—*A.* Yes, on many occasions except Fridays.

Q. On how many occasions did you go?—*A.* I used to go there for many years. I cannot give you exact number of times, once or twice 10 a week.

Q. Did you see anybody there diverting the water?—*A.* I was seen once after I had diverted the water by the lessee of the monastery's property, of Ayios Nicolas.

Q. Who is that man?—*A.* I do not know him. He was the lessee of the properties of Ayios Nicolas.

Q. Who was the man accompanying you?—*A.* Theodoros Lavithis, a water guard, he is now dead.

Q. And that man protested against your having diverted the water?—*A.* Yes. 20

Q. That is to say, on one occasion on which you were seen?—*A.* Yes. This was the only occasion.

Q. You mean the only occasion that they passed remarks or protested against you or it was the first occasion another person saw you?—*A.* This was the only occasion that I was seen diverting the water and the only time that a protest was made against me for taking the water. I was not seen by any Kakopetria inhabitant on another occasion.

Q. You were not seen by any Kakopetria people on any other occasion anywhere above the confluence of the two tributaries?—*A.* No.

Q. Were you ever present when the shadow of a man was measured 30 at the spot of the confluence of the two tributaries?—*A.* No.

Q. How old are you?—*A.* 76.

Q. What property were you irrigating from this water?—*A.* My properties at Korakou on Sundays, Mondays, Wednesdays and Thursdays. I had four donums and three evleks.

Q. That is all you had?—*A.* I had other property which was not irrigable from this water.

Q. When did you go the last time to irrigate, you went to see for this water?—*A.* Fifteen years ago.

Q. These properties are still owned by you or transferred them to 40 anybody?—*A.* I transferred them to my children.

Q. How many years ago?—*A.* Seven-eight years ago.

Q. Did you have any kotchan for this water?—*A.* No, it is our land which carries this right of irrigation not ourselves.

Q. You had a kotchan for the land and no mention was made of any water rights?—*A.* No mention in the title deeds.

Q. You spoke to us about the method of dividing the water amongst several villages, how did you know it yourself?—A. I own property and I used to go there and I know.

Q. What is the source of your information apart from the fact that you were irrigating now and then?—A. I used to go on the spot and see for myself. I used to see the dam that they used to start getting the water and when they used to divert the water.

Q. And you could never be in more than one place at one time?—
A. Yes.

10 Q. On what occasion were you that you saw with your own eyes that this system of division was actually applied?—A. I was at my village Korakou.

Q. It is from there that you derived that knowledge?—A. I used to go to all these different sluices on different occasions. I used to go to one sluice on one day and on another day to the other. I have been to all the sluices myself.

Q. You could not have been to more than one sluice at one time?—
A. Yes. When I used to go to the Frantziko sluice I used to go to Ayios Nicolas as well.

20 Q. Nobody saw you diverting the water of Kakopetria?—A. At Frantziko they used to see me. I used to meet the Kakopetria water guards.

Q. At Frantziko who saw you diverting the water?—A. Kakopetria water guards.

Q. What are their names?—A. I only remember a certain Alexandros Themistocli. He had a companion I know the man but I do not know his name. I think his companion is alive.

Q. Any other man saw you diverting the water at Frantziko?—
A. On one occasion I met Thrasyvoulos the mukhtar when I was diverting the water at a spot up above Frantziko channel and he requested me to allow him to use the water for 10 minutes. I think he is alive and a certain Tooulis Yiakoumi. I do not remember when it was if it was on the same occasion or any other occasion. When a certain Tooulis Yiakoumi was irrigating his property, I diverted the water.

Q. Nobody else from Kakopetria?—A. On another occasion the present priest of Kakopetria when he was still a layman. I diverted the water while he was taking the water himself. I think he is still alive. I used to pass by Kakopetria on my way up to the dams. I myself have been seen by other people as well.

40 Q. Korakou had its own water guards?—A. Yes.

Q. Why did you accompany the water guards at all to Frantziko?—
A. To supervise these water guards.

Q. Were you ever paid for this job?—A. I was owner of properties. I was not paid.

Q. From the confluence of the two streams down there are several dams?—A. Yes.

Q. There is the Vassiliko?—A. Kapathokas and Vassiliko.

Q. Were you present when this water was diverted?—A. No, on no occasion.

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Re-examina-
tion.

Q. Why? Wasn't there any dispute from that point downwards?—
A. No, the inhabitants of Galata or other villages did not interfere with the diversion of the water.

Q. Was the only trouble from Kakopetria upwards?—*A.* Yes. If any people ever took water either up above Kakopetria or below Kakopetria if they ever took the water they had no right, they stole it.

Q. You never took the trouble to go any time from Kakopetria downwards but you took the trouble to visit the dams from Kakopetria upwards?—*A.* I was not responsible to divert the water for all these dams. There were other water guards and land proprietors who were interested in the other dams. 10

Q. Can you name any specific date on which you went to Frantziko yourself?—*A.* I cannot give date. I have been there but I cannot give specific days. This was over 15 years ago and I have not kept a note.

Re-examination by Mr. Clerides :

On the occasion that I met the tenant of Ayios Nicolas monastery's properties he passed remarks to me and I said that I was entitled to get that water on that particular time and he said that I was not. I told him that I was not prepared to quarrel but he did not divert the water back and the left the water running in the river and went away. 20

Court : *Q.* He left the water or you left the water?—*A.* He did not disturb the diversion of the water.

Re-examination continues : The properties which are irrigated from Ayios Nicolas dam are properties which belong to the monastery and some small gardens at that locality.

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Evidence of
Yiannakos
Theopistis,
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Examina-
tion.

No. 7.

EVIDENCE of Yiannakos Theopistis (Witness No. 3).

YIANNAKOS THEOPISTIS, sworn.

I am of Evrykhon. I am 70 years old. I used to be a farmer, a labourer and water guard. I was a water guard for 20 years; 16 of which without interruption. I worked at first for four years then I stopped and I worked again for another 16 years as water guard. I was a water guard of Evrykhon. This water comes from the Karkotis river from Troodos sources. The Karkotis river flows down from many sources from Troodos mountain. Kakopetria, Yialousa, Sina Oros, Kalliana, Tembria, Korakou Evrykhon and Petra are irrigating from Karkotis water, and after they take their water Petra irrigates as well as other villages. I was appointed by the Evrykhon people to guard their water rights in Karkotis river and I used to go to Frantziko and Ayios Nicolas dams to guard the water and also at Karythi and Appliki. Ayios Nicolas, Frantziko and Karydhi are above Kakopetria village. Appliki dam is in Kakopetria village. Appliki 40

dam is above the bridges where the two rivers join. Kakopetria takes the water from the rising of the Pleiads every night except Tuesday towards the morning. On Tuesday night the village of Elia is entitled to the water and during the daytime Linou and Katydhata are entitled to the water. Kakopetria irrigates from the rising of the Pleiads six days of the week to the time when the sun is visible over Troodos, when we take the water. When I say we I mean Evrykhon, Tembria and Korakou. From Ayios Nicolas down to the place where Evrykhon, Kakopetria and Korakou take through their dams the water there are many dams. When

10 Kakopetria takes the water from the rising of the Pleiads to the sunrise the water stops running to Evrykhon, Korakou because not only Kakopetria but also Galata and Sina Oros take the water at the same time. Kakopetria people take the water every day from rising of the Pleiads up to sunrise except Friday when they are entitled to take the water only when the shadow is 7 feet at the Frantziko and Karydhi dams. Kakopetria people take the water from the rising of the Pleiads from June to October, and then in October we stop taking the water. I go to the Frantziko dam every other day at daybreak. I have to divert the water in order that it might go to Evrykhon when the sun is over Troodos in the morning.

20 *Court* : Q. From what spot the sun should be seen over Troodos? Any particular spot?—A. When the sun is seen over Troodos a man standing at the Karkotis sluice. When I say Karkotis sluice I mean Frantziko dam. I was a water guard for 20 years. During these 20 years that I have been a water guard I used to take the water every day at sunrise except Fridays, when I used to take the water at the time when the shadow of a man was 7 feet on the ground. On Tuesdays I did not take the water. We were not entitled to the water on that day. On Tuesday daytime Linou and Katydhata are entitled to the water and during the night time Elia. Three villages, Evrykhon, Korakou and Tembria take

30 their water at the same time. These villages were entitled to take the water and take the water from sunrise to the afternoon at the time when the shadow of a man was 7 feet on the ground, when Petra was entitled to take the water. Petra takes the water four days of the week on the nights of Saturday, Sunday, Tuesday and Wednesday. On Monday afternoon Elia is entitled to the water. On Thursday afternoon Elia is entitled to the water. Friday afternoon Evrykhon, Korakou and Elia are entitled.

XX'nd by Mr. Houry :

Q. How old are you?—A. 70 years old.

Q. How long ago did you last serve as water guard?—A. Two

40 years ago.

Q. All in all you served 16 years as water guard?—A. No, 20 years.

Q. At what age did you start?—A. 50 years old when I started first.

Q. Were you regularly going to Frantziko yourself during the years you served as water guard?—A. Yes. I used to go there sometimes and sometimes my colleague.

Q. What was your job; was it to watch Frantziko?—A. Yes, to guard Frantziko and Karydhi dams.

Q. You were watching Frantziko, Karydhi and all the other dams at Appliki?—A. Yes, and Appliki.

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tion,
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tion,
continued.

Q. And all the other dams?—A. There was another water guard for the other dams.

Q. What was the last time you visited Frantziko?—A. 1941.

Q. Twenty years ended in?—A. In 1946.

Q. You stopped going in 1941?—A. I did not go to the Frantziko after 1941 because they would not allow us to go there.

Q. Not even to Karydhi?—A. No.

Q. Neither Appliki?—A. No.

Q. You were watching the dams from Kakopetria downwards?—
A. After 1941, yes. 10

Q. During the 15 years of experience at Frantziko do you remember any of the Kakopetria people to see you diverting the water from the dam into the river?—A. Yes, Nicolas Ioannou. I was seen by him several times. Also Haralambos Violaris, Alexandros Savva. I cannot name any other persons. I was seen by many other Kakopetria people but I am not in a position to tell them by their names. I used to pass through the village and I was seen by many people in the village.

Q. Did these people see you at Frantziko?—A. Yes, they saw me at Frantziko dam.

Q. Were you alone or with any other man when you were at Frantziko?—A. I was alone. 20

Q. Were you ever seen at the Frantziko when the shadow of a man was measured at Frantziko?—A. Yes, the water guard of Kakopetria and myself measured the shadow at the Frantziko dam. He is Yiannis Papa Antoni.

Q. He is alive?—A. Yes.

Q. Was there anybody else present?—A. Yes, there were other persons present. I cannot give you their names. I only remember the persons with whom I measured the distance of 7 feet.

Q. On one occasion was it more than one occasion?—A. This used to take place every Friday. 30

Q. And always with the same man?—A. He was their water guard.

Q. At Karydhi tributary did anybody see you diverting the water from any of the dams there at Karydhi and Apliki?—A. Yes, many people.

Q. Can you name them?—A. I forgot them, I have not gone there for the last five to six years.

Q. Was there anybody present when the shadow of a man was measured at the dams of Karydhi and Apliki?—A. We did not use to measure the shadow of a man at Apliki. We used to measure the shadow of a man at the Karydhi dam. 40

Q. Was anybody present when the shadow was measured at Karydhi?—A. Yes, persons who were entitled to irrigate from that water I do not remember their names.

Q. You know Ayios Nicolas river? You know that there are many water sources of springs from private land on the side of these two rivulets?—A. No, I do not know if there are such sources.

Q. Did you say that you are well acquainted with that locality or your job was that of a water guard?—A. I used to go as far as the sluices not above that locality.

Q. And the uppermost point which you reached at the Ayios Nicolas rivulet was Frantziko?—A. I used to go as far as Ayios Nicolas dam.

Q. Were you seen by anybody diverting the stream at Ayios Nicolas?—A. Yes. It is a small channel actually.

Q. Can you name them?—A. I do not remember their names.

Q. You are resident of Evrykhou?—A. Yes.

10 Q. You never had any property yourself to irrigate?—A. I had properties which I have given to my children.

Q. The interest of your village to-day is that Kakopetria should not divert the water in the day time from the points in the dams above Kakopetria?—A. The whole quantity of the river should go down.

Q. That is what you want?—A. Yes, certainly.

Q. Do you know anything about "holetri" along Karvounas stream?—A. Yes.

20 Q. There was a device by which the water of the Frantziko channel was crossing the Karvounas river over the land the opposite side over the ravine?—A. There was no such device before 1941, but this device was after 1941. I have not been there myself to see. I heard so.

Q. I put it to you that is impossible if we believe you that for 15 years your job was to be constantly along these 2-3 dams and not to remember the people who were keeping company with you and to whom you were talking?—A. I have mentioned the names I remember.

Re-examination :

It was my duty to guard the water in the Karkotis river. I never went to look for any source in private property along the river.

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tion,
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*Re-examin-
ation.*

No. 8.

30 EVIDENCE of Polis Victoras (Tsingis) (Witness No. 4).
POLIS VICTORAS (TSINGIS), sworn.

I am of Petra. I am married in Petra and live in Petra. I married 12 years ago and since then I have been living in Petra. In 1941 I was appointed as water guard to guard the water at Kakopetria. I went together with Michael Anastasi, witness No. 1. I went to the locality Frantziko. I went there on the 27th May, 1941. We arrived there at 12 noon. The water at the time we arrived there had been diverted and was flowing into the river. While we were there the mukhtar of Kakopetria came together with 5-6-8 other persons and he said to us, "Go away, 40 we are not going to let you have the water." I told him, "We came here to guard our water," and he said, "We are not going to let you do it." Then the mukhtar ordered one of the persons present to move the sluice

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and direct the water back and added, "Well, since you insist on doing this you should bring along your own sluice." They insulted us. They wanted to assault us and we left. We went back to our village and reported the matter. On the following day I again went to Frantziko with Hilarion Ioannou together. We arrived there on the following day at noon. The distance between our village and Frantziko dam is about 10 English miles. When we arrived there the water had been diverted and was flowing into the river. About two hours later a certain Rodis Kazanos came there and a woman named Chrystallou, Defendant 6, and a boy of 20-22 years old, who I think is a nephew of Chrystallou; I do not know his name. 10
 When they came there the young man moved the sluice in order to divert the water towards Kakopetria. We asked why he diverted the water and he said I want it to be so, I want to irrigate my property. At that moment Kazanos arrived on the spot he was holding a shovel which he raised up and said, "You keratadhes I shall kill you. I would not let you take the water. You must leave the place." We withdrew and started going towards the old village of Kakopetria. He was throwing stones at us and reached the new village of Kakopetria. From there we telephoned to the Police. Many people gathered outside the café and were about to assault us. We informed the Police and P.C. Ali came 20
 there. They did not allow us to take the water. It takes four hours for the water from Frantziko to the Evrykhon sluice from where the Petra village take the water. It takes about 6-7 hours for the water to go from Evrykhon sluice to Petra properties. I used to go to the Frantziko dam at 12 noon because if the water is diminished at 12 noon then it takes more than four hours to go to Evrykhon sluice from where Petra take the water.

Cross-examination.

XX'nd by Mr. Hji Pavlou :

I reported to the Police on that day what I deposed now to the Court. The Police did not take them to the Court. When I went to the Frantziko 30
 dam I found the water diverted and flowing into the river Karkotis. I wanted the water to flow into Karkotis river so that it would reach Evrykhon sluice. On both occasions I found the water running in the river coming down. The water guards of Korakou and Evrykhon had diverted the water before in the river as they were entitled to get the water from sunrise that is why the water was flowing in the river. On one occasion it was Rodhis Kazanos and Defendant 6 and the young man who diverted the sluice. Had it not been for the P.C. Ali they would have killed us. It takes four hours for the water to go from Frantziko to Evrykhon sluice. It is about three to four hours. From Evrykhon 40
 sluice it takes 5-6 hours to go to Petra properties. I know all the streams and rivers there including Karkotis. Karkotis is from Hionistra and flows to the sea. The whole river is called Karkotis. Ayios Nicolas river is one and the same with Karkotis. It is not a fact that the Karvounas river and Ayios Nicolas river meet at a point near Kakopetria and these two streams when they join after they are called Karkotis. I am 35 years old. I am of Vassa (Kilaniou), I married to a girl at Petra 12 years ago and since then I have been living in Petra. That was the first time I went to Petra. I do not remember the year of my marriage. I have two children, the oldest is six years old. 50

EVIDENCE of Hilarios Joannou (Witness No. 5).

HILARIOS JOANNOU, sworn.

X'nd by Mr. Indianos :

- I am of Petra and I am 54 years old. I am a farmer. I have been a water guard since I was 25 years old. I am one of the Plaintiffs No. 18. I know Karkotis river very well. Karkotis river emanates from Troodos sources and comes down. I know Karvounas as well as Ayios Nicolas rivers. Karvounas river and Ayios Nicolas river flow into Karkotis river.
- 10 I know Ayios Nicolas dams. They are Ayios Nicolas, Kapathokas, Vassiliko and Frantziko. There are 3 dams in Karvounas river, two in Karydhi, and one at Apliki. My village irrigates from Karkotis river. We take this water at the Apliki sluice when the shadow of a man is 7 feet from the ground in order to take this water. We go at 12 noon to Kakopetria and guard the water there. We take the water from Evrykhon sluice and Korakou sluice and in both places the shadow of a man must be 7 feet on the ground. We do not take water from that spot downwards. We also take the water from Vrokhos sluice when the shadow of a man is 6 feet on the ground, and also from Paliomylos at 5 feet. Petra
- 20 takes the water on Saturday night, Sunday night, Tuesday night and Wednesday night. Kakopetria takes the water on all days except Tuesday. They take this water from the rising of the Pleiads to sunrise when the sun is over Troodos and this up to the 15th August. When I say 15th August I mean the old style calendar that is 28th August. From the 28th August onwards Kakopetria takes the water from the rising of the Orion to sunrise. We take this water from 4 dams in Ayios Nicolas river : Ayios Nicolas, Frantziko, Kapathokas and Vassiliko ; 3 dams in Karvounas river ; 2 dams at Karydhi and one at Apliki. Elia takes the water on Tuesday. Elia takes the water also on Thursday towards
- 30 Friday. Linou and Katydhata take the water after Elia had finished taking their water. Elia takes the water from the time that the shadow of a man is 7 feet on the ground up to the following day at sunrise when Linou and Katydhata begin taking this water. Evrykhon, Tembria and Korakou take the water on the same days that we take the water. I used to be accompanied by Loizos Nicola, Michael Pavlou, Michael Anastassi. We used to go to Katydhata and Galata sluices. On the 28th May, 1941, I went to Kakopetria. I was accompanied by Polis witness No. 4. We went together to the Frantziko dam on the 28th May.

Court (Mr. Pierides) : With the new style calendar.

- 40 We went there about 1 to 2 p.m. We went there to divert the water. At the time we arrived on the spot the water was flowing in the river towards Evrykhon. A certain Chrystallou arrived there accompanied by a young man and wanted to divert the water from the river. We went there and we used to go there early in order to guard the water. Chrystallou, Defendant 6, a young man and another man came from Kakopetria and they diverted the water and insulted us and we had to leave. We told Chrystallou not to divert the water towards their field but she sent the young man to the cafe and the other man came from the village and diverted the water from the river into their property. When
- 50 they came there Rodhis was holding a big stick and a shovel. After we

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had been stopped from diverting the water we went to the new village of Kakopetria and informed P.C. Ali who arrived on the spot and he told us to leave the village as the villagers would not allow us to take the water. When the volume of the water is big and it is not diverted in any particular spot then it reaches our village at about 10 to 11 p.m. that is to say it takes 11 hours to reach our village. During the 26 years that I have been a water guard only once the water was diverted by Kakopetria inhabitants and that was the wife of Haralambos Violaris who later came and paid compensation for it. Since 1941 that they stopped the water from running to our village they allowed us no water any more. In 1941 I owned irrigable land. It was a garden land. It contained fruit trees and to-day it is dried up. All the trees are dry. It was a school garden. 10

Mr. Houry : I object to that. In the Statement of Claim they do not claim special damages. They do not give particulars of the damages and in consequence they are not entitled to prove damages under the civil wrongs law when no particulars are given.

Mr. Indianos : We claim £700.

Mr. Houry : That is not particulars. Particulars have to show item by item.

Mr. Indianos : What is the damage caused to your village per day 20 that you are deprived of this water ?

Mr. Houry : I object Your Honours for the same reason.

Mr. Indianos : If Your Honours look at paragraph 9 of the Statement of Claim it says : "The minimum damage caused to the Plaintiffs' properties each day they are deprived of the water is £10."

Court (P.D.C.) : It appears that you gave description but not particulars. You may say that the caused damage is so much but to claim damages separately is something different.

Examination continued :

It caused considerable damage. We did not have any other water which we could make use of in order to irrigate our property besides the one from the Karkotis river. We Petra people have title deeds in respect of this water. 30

Cross-
examina-
tion.

XX'nd by Mr. Houry :

Q. How often did you go yourself to the dam of Ayios Nicolas stream ?

A. I used to go there often every other week.

Q. From what year ?—*A.* Since the time I was 24–25 years.

Q. Since when you have been a water guard ?—*A.* For 30 years about.

Q. Up to what year did you continue to be a water guard ?—*A.* Till 40 to-day.

Q. Can you say you ever diverted the water into the stream from the Frantziko water dam ?—*A.* Yes, many times.

Q. You diverted the water into the stream in the presence of other people ?—*A.* Yes. I have been seen by the following persons : Yiannakos of Evrykhon, Nicolas Ioannou, Socrates Hji Theodoulos, Christos Vassiliou, Thrasyvoulos, the mukhtar of Kakopetria, Tooulis Pakouros, Hadjis,

son-in-law of Papa Nicola, Yiannakos Theopisti and Yiannis Pilakouri. The present priest of Kakopetria has seen me many times ; Alexandros, who is dead now ; his father is alive ; Yiannis, the old mukhtar ; he had been paid by our village and used to assist us ; the ex-mukhtar, Philis. At Ayios Nicolas dam when I diverted the water I was seen by Hji Ioulianis. At the Karydhi dam I was seen by Haralambos Pitsillis, Antonis Maronitis, Papa Nicolas and many others whose names I do not remember. At Apliki I was seen by the following : By the father of the present Bishop of Kyrenia, he is alive ; Tooulis Polouros and Thrasyvoulos. I went
 10 together with Michael Pavlou at Petra, Michael Anastassi of Petra, Loizos Nicolas of Petra, Christodoulos Hji Yianni to divert the water at the different times. Also with Polis Victora Tsingis, witness 4. We used to go and divert the water whenever we were in need of water. When there is drought we go earlier to divert the water in March and April but usually when there is no drought we usually go there to divert the water in July, August and September. When there was no drought the Kakopetria people used all the water during the other months to irrigate their properties. I know the dams and river at that locality. There are no private springs near Karvounas and Ayios Nicolas river. There are only
 20 springs in the river ; they are in the bed of the river. There are no springs in private properties outside the rivulets there are only springs in the river. I have never been up to know the private land or gardens to see whether the springs are in the private properties. I was concerned with the water in the river.

Q. Were you ever present when the shadow of a man was measured either at Ayios Nicolas rivulet or along the Karvounas channel ?—A. We measured the shadow of a man below these spots, not up there.

Q. You told us that there is a system of distribution which proceeds according to definite system ? Did you know about the existence of
 30 that system ?—A. I used to go there and see for myself for so many years.

Q. I put it to you that you were never at all seen by any Kakopetria people diverting the water from the rivulet of Ayios Nicolas or Karvounas ? —A. I was seen by Kakopetria people and by their wives.

Q. If you did this it is for their Honours to believe it or not because you stole the water ?—A. I did not steal it.

Re-examination by Mr. Indianos :

It sometimes happens that there is drought in September, October and November and on this occasion we go and divert the water to our village. During these months I have mentioned, September, October,
 40 November and December when there is drought we take all the water which we are entitled to during the hours that we are entitled to take. The spots where we measure the shadow of a man is at Korakou 7 feet. Evrykhos 7 feet, Vrokhos 6 feet and Paliomylos 5 feet. Our village, Petra, is not interested in the water on Friday.

Mr. Houry through leave of Court :

Q. Whether this man is one of the fellows who sold the water before reaching the village of Petra ?

Court : Leave granted.

Answer : No.

In the District Court of Nicosia.

Plaintiffs' Evidence.

No. 9.
 Evidence of Hilarios Joannou, 17th May 1948, Cross-examination, continued.

Re-examination.

EVIDENCE of Michael Pavlou (Witness No. 6).

In the
District
Court of
Nicosia.

MICHAEL PAVLOU, sworn.

Plaintiffs'
Evidence.

No. 10.
Evidence of
Michael
Pavlou,
17th May
1948.
Examina-
tion.

I am 64 years old. I am a farmer. I was a water guard and I am also one of the persons entitled to Petra water. I have a title deed for this water. I have been a water guard for 45 years. I know Karkotis river. Karkotis river comes from Troodos sources. I know the two rivers Ayios Nicolas and Karvounas. I know the three dams in Ayios Nicolas : Ayios Nicolas, Vassiliko, Frantziko and Kapathokas below the two bridges. There are three dams in Karvounas river. Two at Karydhi and one at Apliki. The water in the two rivers Ayios Nicolas and Karvounas join at the two bridges from where the river is called Karkotis. Karkotis emanates from the sources of Troodos. Kakopetria is entitled to get the water on six nights every week except Tuesday. From the rising of the Pleiads to sunrise when the sun is visible over Troodos. When the water is taken by the Tembria, Korakou and Evrykhon. On Tuesday Linou takes the water. We the Petra people are entitled to take the water on the nights of Saturday, Sunday, Tuesday and Wednesday. On Saturday afternoon we take the water at Paliomylos when the shadow is 5 feet on the ground, the shadow of a standing man. At Vrokhos and Korakou we take the water when the shadow is 7 feet. Vrokhos 6 feet and Paliomylos 5 feet. I have been a water guard for 45 years. Before these 45 years that I have served as water guard we were not stopped by any person from taking the water until seven years ago when we were stopped by the Kakopetria people. For the last seven years we have only irrigated very limited extent of property. On Friday I think that Evrykhon, Tembria and Korakou take the water. I do not know because the water is not ours on that day.

Cross-
examina-
tion.

XX'nd by Mr. Hadjipavlou :

Evrykhon takes the water from Kakopetria sluices. We have never taken any water from Kakopetria sluices, we found the water in the channel and we take the water. Kakopetria people take their water from the Frantziko, Vassiliko, Kapathokas, Ayios Nicolas, Karydhi and Apliki dams. Galata village take their water from Vassiliko sluice from a spot below. Both Kakopetria and Galata take the water from the Kapathokas sluice. I think that Kakopetria people divert the water from the Kakopetria sluice. I went to Ayios Nicolas. There is a dam there. There are no sources in the Ayios Nicolas property. There are some springs in these properties of the monastery but no fields are irrigated from them. These springs are in private properties of the Archbishopric at Ayios Nicolas. The monastery properties cannot be irrigated from the sources. These sources flow into the river. The water at Ayios Nicolas dam flows from the Troodos forest. There is no Kokkinorotsos or Kannoures streams at that locality. Our water comes from the sources of Troodos. From Ayios Nicolas dam the water when diverted flows down to the Frantziko dam. We the Petra people have not built a dam on the Frantziko locality we are not interested in that dam we are interested in the sluice there. The dam is carried away every year by the water of the river. Kakopetria people are bound to put up a dam every year. Frantziko dam is an ancient dam. Near the Frantziko dam there is a sluice from where the water is

diverted to Kakopetria people's property. That channel is built and maintained by the Kakopetria people. In Karvounas river there are two dams at Karydhi which are maintained regularly by the Kakopetria people. There are channels from the Karydhi dams into the Kakopetria people's properties. The same applies to Apliki dam. I did not go to divert the water from the Frantziko dam. We diverted the water from the sluice of the Frantziko locality not the dam. The sluice is near Kakopetria channel. I have not been there to see this place for the last 10 years. I do not know if the sluice to-day is an iron sluice. It was a wooden sluice before and the Kakopetria people maintained it. As regards Karydhi dam I used to divert the water at a sluice opposite the house of Charalambos Pitsilli. I personally did that, 15 years ago. I have not diverted the water at that locality since then but other co-villagers of mine did that. I diverted the water on several occasions before. It may have been on thirty occasions over a period of fifteen years. I was seen by Nicolas Yianni, Alexandros Savva, Thrasyvoulos, the mukhtar, and Charalambos (?) Dolores (?) I was in their village and carrying the shovel on my shoulder. They knew that I was a water guard. They saw me at the sluice. I did not take them with me to the sluice to see me. They saw me in the village as the water guard. I diverted the water from the Apliki sluice 15 years ago. I did not take any Kakopetria inhabitant to see me do this. They used to see me in the village. I diverted the water at Ayios Nicolas 15 years ago. I was not seen by anybody there on the spot. I did not see anything crossing the water over the river to the other side at the Apliki to irrigate properties. I do not know the spring of Papa Yeorghis. I do not know the spring of Taoutides.

Re-examination :

At Ayios Nicolas locality there is a dam from which the monastery's properties are irrigated. There is no (sanidhi) sluice there. There used to be no sluice there earlier. I do not know if there is one now. We used to divert the water at that locality in a spot near the pine tree into the river. At Frantziko there is a dam and from there the water flows into the Frantziko channel. Frantziko dam is carried away by the river. At the Frantziko Kakopetria people have the right to stop the water with the use of branches and stones they are not entitled to build a dam there. We divert the water at the Koftousa at the sluice of Frantziko not at the dam. Frantziko sluice is I think one English mile from the Frantziko dam. At the Frantziko sluice when we divert the water it flows into the river and goes down into Kapathokas sluice. When the Frantziko dam takes its water there is water left in the river which flows down to Kapathokas. At Kapathokas we sometimes divert the water from up above and sometimes below the flour mill. I think that the power engine is driven from the water flowing into Kapathokas. At the Karydhi dam at the time I used to go there there was no " sanidhi " (sluice) but only a " dhyssia." At the Apliki there was a " dhyssia."

Mr. Houry through leave of Court : Q. At the Koftousa which this water runs into the river, Frantziko channel, the witness left the impression that the channel leaves the water and runs into the river from Koftousa there is an intricate system. Shall I ask him this question ?

Court : If you could simplify your question, Mr. Houry.

Mr. Houry explains to the witness in Greek.

Reply : The water is taken from the big channel.

In the District Court of Nicosia.

Plaintiffs' Evidence.

No. 10.
Evidence of Michael Pavlou, 17th May 1948, Cross-examination, continued.

Re-examination.

EVIDENCE of Loizos Nicola (Witness No. 7).

LOIZOS NICOLA, sworn.

Plaintiffs'
Evidence.

No. 11.
Evidence of
Loizos
Nicola,
17th May
1948.
Examina-
tion.

I am 65 years old. I have been a water guard for 45 years. I know Karkotis river. It emanates from Troodos sources and flows down. I know Karvounas. I know Ayios Nicolas river. I know the four dams at Ayios Nicolas; Ayios Nicolas, Frantziko, Vassiliko, Kapathokas. I know the dams at Karvounas: two at Karydhi and one at Apliki. I own properties in Petra which are irrigable from Karkotis water. I was appointed by the Petra village as water guard. I have been paid by them. 10
Petra village is entitled to take the water on the nights of Saturday, Sunday, Tuesday and Wednesday. We take this water from the sluice at Evrykhou, Korakou, Tembria when the shadow of a standing man is 7 feet from the ground. At Vrokhos we take the water at 6 feet. At Paliomylos we take the water on Saturdays at 5 feet. Kakopetria, Galata and Sina Oros take their water at the rising of the Pleiads to sunrise when the sun is visible over Troodos. Kakopetria takes the water six days a week except Monday night. Kakopetria takes its water from May to 15th August old style calendar, 28th August new style calendar. After 28th August they take their water from the rising of the Orion at sunrise 20
when the sun is visible over Troodos. On Tuesday Linou is entitled to take the water. Monday night to Tuesday sunrise Elia takes the water and from sunrise up to the time when the shadow of a man is 7 feet when Petra takes the water. We are not entitled to water on Fridays. As a water guard I used to go to Ayios Nicolas dam. I used to go there and guard the water so that it may not be diverted and stolen. During the period May to middle of August after sunrise after Kakopetria people had finished taking the water the water used to flow down to our village. During the 40 years that I have been a water guard Kakopetria people prevented us from taking water in 1941 only. I used to go to Ayios Nicolas dam, 30
Frantziko, Kapadhokas accompanied sometimes by Michael Pavlou, witness No. 6, and sometimes by Michael Anastassi and Hilarion Ioannou, witness No. 5, I used to go to the two Karydhi and Apliki dams accompanied by the same people.

(Adjourned to following morning 9 a.m.)

18th May
1948,
Cross-
examina-
tion.

18th May, 1948.

XX'nd by Mr. Houry :

Q. You told Their Honours yesterday that Karkotis starts from Troodos?—A. Yes.

Q. From what point of Troodos this Karkotis river starts?—A. From 40
Ayios Nicolas further up.

Q. You mean Hionistra?—A. Yes.

Q. You must be well acquainted with the names of the rivers there?—
A. Yes.

Q. At Ayios Nicolas monastery two rivulets meet together? Do you know them?—A. What I know is that the water springs from Troodos and comes down and that river I know as Karkotis.

Q. My question is do you know that the two rivulets at Ayios Nicolas Monastery meet?—A. There are two rivulets that meet at Ayios Nicolas monastery one called Potamos ton Kannouron. All these streams emanate from Troodos and come down.

In the District Court of Nicosia.

Q. Is there no Kokkinorotsos and no Potamos ton Kannouron?—A. We do not know the river by the name of Potamos ton Kannouron or Kokkinorotsos.

Plaintiffs' Evidence.

Q. From Ayios Nicolas monastery down to the village of Kakopetria there is another stream. Do you know the name of that stream?—
10 A. Klarios or Karkotis.

No. 11.
Evidence of
Loizos
Nicola,
18th May
1948,
Cross-
examina-
tion,
continued.

Q. I put it to you that that river is only known by the name of Ayios Nicolas river and nothing else. You know that it is called Ayios Nicolas?—A. Klarios river which passes by Ayios Nicolas springs from Troodos.

Q. On what point does this name Ayios Nicolas river stop?—A. This river is not called Ayios Nicolas river it is called Klarios river. It is known Klarios even from Kakopetria down to our village.

Q. This Klarios Potamos does it extend to the rivulet known by the name Karvounas?—A. Near Vassilikos.

Q. You know Karvounas river?—A. Yes.

20 Q. And it is the river that starts from Troodos again?—A. Yes.

Q. And it joins the Karkotis proper at the village of Kakopetria?—A. Yes, near Vassiliko.

Q. Does this river Karkotis give also its name to the rivulet known by the name Karvounas?—A. When the two rivers Karvounas and Karkotis meet then they are both known as Karkotis.

Q. And the point on which they meet is in the river of Kakopetria?—A. Below Kakopetria near the mill.

Q. If I take you to the river of Karvounas and I say to you this is known also by the name of Karkotis what would you say?—A. I will tell
30 you that this river is known as Karvounas.

Q. I want you to explain to their Honours is the position identical as regards the river of Ayios Nicolas? If I take you to the river between the Kakopetria and monastery of Ayios Nicolas and let us call that river for the sake of argument Ayios Nicolas river if I take you there and say that this is also known by the name Karkotis, what would you say?—A. It is Karkotis.

Q. You know the localities well along these two tributaries?—A. Yes, very well.

Q. In your lifetime you visited the place several times?—A. Yes.

40 Q. Tell me, the river coming down from Ayios Nicolas monastery, did you ever inspect them yourself?—A. Yes, I know the springs. I have been there even up above Ayios Nicolas.

Q. So these sources spring from the Government forest land?—A. Yes.

Q. Now from Ayios Nicolas monastery down to Kakopetria do you notice that any springs exist along the sides of the river?—A. What springs?

*In the
District
Court of
Nicosia.*

*Plaintiffs'
Evidence.*

No. 11.
Evidence of
Loizos
Nicola,
18th May
1948,
Cross-
examina-
tion,
continued.

Q. Springs from the bed of the river itself, not from the fields?—
A. No springs springing on private lands supply the river with any water.

Q. Tell me, do you know the land near the monastery belonging to
Nicolas Ioannou and Sofocli?—A. I knew that this property belongs to
the monastery, but I do not know if they have been bought by these
people. I know these properties.

Q. I tell you that there is a spring there, have you ever seen it?—
A. There are many springs in Karkotis.

Q. These springs emanating from private lands, do you know it?—
A. No springs from private land, river springs. 10

Q. You mean to say that the only springs are in the bed of the river?
—A. Yes. Bank of the river.

Q. When you say bed of the river, you mean 3 yards from the middle
of the river? I put it to you that these sources are scores of metres from
the bed of the river in the land of Nicolas Ioannou?—A. No, I do not
know the springs in the private lands.

Q. Another spring in private property is that of Costas Angelika?
Did you ever see it?—A. I have not been there to see these properties.

Q. Any other spring near the sluice at the Avlakoudhi? Did you
know anything about its existence?—A. I know the river, I know the 20
springs in the river, but I do not know any other springs in private
properties. I do not know the springs of Papa Yeorghouthkia. I have
not looked to see for any springs in private properties.

Q. You said you visited the spots in your capacity as water guard,
have you got any note book to show us how often you visited that locality?
—A. No, I have not got any note. I have not been to that locality
since 1940.

Q. When was the first time that you visited Ayios Nicolas locality?
How many years ago?—A. I first visited the place in 1909.

Q. Till 1935?—A. Yes. 30

Q. For 25 years?—A. Yes.

Q. How many visits did you pay each year?—A. Well, ten to fifteen
times during the summer.

Q. Your job was during the summer?—A. Yes.

Q. What months of summer?—A. June, July, August, September.

Q. In all the other months, according to your own version, Kakopetria
was free to use the water all the other months?—A. During the other
months there was plenty of water. They were not using it all and the
water would come down to our village.

Q. For each year you were going ten to fifteen times, so in every 40
month your visits did not exceed three to four times?—A. Yes.

Q. And how long were you staying there?—A. I used sometimes to
spend the night up there from Saturday to Monday as I had to keep
guard for two nights running.

Q. Where were you spending your time?—A. At the café. I used
to spend my time in the café in Kakopetria until my time came to take
up duty.

Q. When were you taking up duty, what was your time?—A. At 12 noon.

Q. You were taking duty at noon? On what day?—A. On Saturday noon.

Q. When you took up duty, on what spot were you staying?—A. Near Vassiliko. We used to lie down there near the dam until the time came for the Kakopetria water guards to take the water.

10 Q. You said that from Saturday noon and you were sleeping on the spot?—A. I was on duty on the spot from Saturday 12 noon until the time that Kakopetria people were entitled to take the water at the rising of the Pleiads when I would go to sleep.

Q. You would stay there until what time you said?—A. I used to take up duty on the spot at 12 noon Saturday and wait until the rising of the Pleiads when Kakopetria water guards would take up duty.

Q. That is Sunday morning?—A. Midnight Saturday.

Q. And then when the Pleiads rose, what did you do, did you stay on the spot or went to the café again of Kakopetria?—A. I used to go to that dam I have mentioned and not to sleep.

Q. And you would wake up on Sunday morning?—A. Yes.

20 Q. What time of Sunday would you again take up duty?—A. At noon.

Q. Where, on what spot?—A. At Kakopetria, at Ayios Nicolas and Frantziko dams.

Q. On Sunday you took up duty at what time?—A. At noon.

Q. Up to what time?—A. Until the rising of the Pleiads.

Q. Who were the people who received the water on behalf of Kakopetria? You remember them? Name them?—A. Yiannis Papa Antoni. Sometimes the water guards would not come to take delivery of the water. We would not wait for them, we would leave before they came.

30 Q. Who usually were coming? Whom do you remember?—A. Persons who wanted to irrigate. I do not know the names of other persons, but I knew the names of those persons I have mentioned who were coming regularly.

Q. So during your 25 years guarding the water you only remember the name of only one man who came next to you to make use of the water?—A. At the rising of the star I would go away.

Q. Now this Yiannis whom you mentioned was a frequent visitor who came when your time was up?—A. Yes, he was working as a water guard with me for Petra on many occasions.

40 Q. Where was he coming regularly when your time was up?—A. At the Frantziko.

Q. Did any other come to Frantziko except this man?—A. I used to leave, I do not know if people came after I had left.

Q. Did anybody ever see you diverting the water from Frantziko into the river?—A. Kakopetria people used to see me.

Q. Do you remember the names of any one that happened to see you during the 25 years duty?—A. I remember Hambis Violaris and Nicolas Ioannou. I have not kept a note of the other names.

*In the
District
Court of
Nicosia.*

*Plaintiffs'
Evidence.*

No. 11.
Evidence of
Loizos
Nicola,
18th May
1948,
Cross-
examina-
tion,
continued.

In the
District
Court of
Nicosia.

Q. At what spot were you diverting the water of Kakopetria into the river?—A. From the sluice at Frantziko.

Q. That was invariably the place from which you diverted the water into the river?—A. Yes.

Plaintiffs'
Evidence.

Q. No misunderstanding about Dhyssia. Dhyssia is the catchment that is the place in the river itself that diverts the water into the channel?

—A. Dhyssia is made of stone and earth. The Dhyssia which I referred earlier in the Frantziko is made of stone and earth.

No. 11.
Evidence of
Loizos
Nicola,
18th May
1948,
Cross-
examina-
tion,
continued.

Q. The Dhyssia about which you are speaking is a dhyssia that takes the water from Petra channel at Kakopetria and throws it into the river that is the dhyssia?—A. We used that dhyssia to divert both the water in the river for our use and the Kakopetria people for their use. The Koftousa was built later. Koftousa was built to-day at the same place that previous there was the Dhyssia, it is on the same spot. 10

Q. You were diverting the water from the channel Dhyssia into the river?—A. Yes, in the Frantziko.

Q. And the water before it was diverted runs for a long distance, probably from half a mile to one mile, before you reach the spot from which you diverted the water?—A. As soon as we diverted it from the Frantziko the water falls down into the river down. 20

Q. The water from the spot that you were diverting runs for a long distance from half to one mile in Kakopetria channel?—A. The water runs for about a mile from the dam from the Frantziko dam down to the sluice.

Q. Along that mile do you know if Kakopetria has irrigable land?—A. Yes, below the channel.

Q. That is during one mile?—A. Yes.

Q. And never did any of you claim the rights as to irrigation of this land?—A. They did not interfere with our rights till 1941.

Q. This is not my question. My question is that along that distance of one mile before you divert the water Kakopetria has a lot of irrigable land?—A. Yes. 30

Q. You never interfered to stop these lands from being irrigated?—A. They did not interfere at the time we were entitled to irrigate. Had they done so we would have stopped them from taking water in these lands.

Court: Q. You mean at the time you were taking it they were irrigating those lands along the channel, is that what you mean?—A. Yes.

Cross-examination continued: Q. Did you ever walk along that one mile in your 25 years of service?—A. Yes. 40

Q. How often?—A. I used to go up along the channel as far as Ayios Nicolas. If I found any water there I used to divert it, if not I would go down.

Q. You never diverted any water in 25 years of service?—A. They did not interfere with us.

Q. Now from the sluice you say from which you were diverting the water into the river?—A. Yes.

Q. Is it a fact that from that Dhyssia a lot of other fields of Kakopetria are irrigated when the water is diverted downwards?—*A.* Yes, but when their turn comes.

Q. So there are old channels that irrigate gardens of Kakopetria from that spot?—*A.* It is one channel which comes to the sluice and we divert the water on that spot into the river and they divert the water into their one channel from the same spot, when their turn comes.

Re-examination by Mr. Clerides :

10 When I had to go up to Kakopetria to guard the water on Saturday I used to spend my night near Vassiliko. At noon I would go on duty to the Frantziko. From the Frantziko I used to proceed keeping guard as far as Ayios Nicolas. This I was doing from noon until the rising of the Pleiads. After rising of the Pleiads I would leave Frantziko and come down to Vassiliko where I used to sleep near the road.

In the District Court of Nicosia.
Plaintiffs' Evidence.
No. 11.
Evidence of Loizos Nicola, 18th May 1948, Cross-examination, continued. Re-examination.

No. 12.

EVIDENCE of Mehmet Raif Hji Mullayim (Witness No. 8).

MEHMET RAIF HJI MULLAYIM, sworn.

I am of Angolemi. I own properties at Petra. I own also water. I have 27½ hours of water every 22 days. I have title deeds for this water.
20 This water for which I have title deeds comes from Troodos. It comes in the river it is known as Karkotis river. Many villagers irrigate from this river as far as Prastio. The following villages irrigate from this: Kakopetria, Galata, Sina Oros, Kalliana, Evrykhon, Tembria, Korakou, Ayios Epifanios, Flassou, Linou, Katydhata, Ayios Yeorghios, Petra, Elia. I have been the owner of this water over 30 years.

To Court : I am 60 years old.

Examination continued : I know that every village has its fixed hours for irrigation. They are regulated by signs in the sky, by the stars. Kakopetria has the right to begin irrigating from the rising of the Pleiads up to the 15th August old style calendar, 28th August, new style calendar. After that date from the rising of the Orion. They irrigate until the sunrise when the sun is visible over Troodos. I do not know very well but I think Kakopetria have the right to take every day except Tuesday. From the rising of the Pleiads to sunrise no other village has the right to irrigate. Galata, Sina Oros have the right to irrigate from the rising of the Pleiads. Evrykhon, Tembria and Korakhon have the right to irrigate from sunrise. On Saturday these three villages have the right to irrigate when the shadow of a standing man is 5 feet on the ground at a spot near the old mill when Petra has the right to take the water. On Sunday we
30 take the water at the sluice of Evrykhon and Korakhon. Petra takes the water when the shadow of a man is 7 feet on the ground at these two spots Evrykhon and Korakou. We take the water at Vrokhos when the shadow of a man is 6 feet. Petra is entitled to take the water on the following

No. 12.
Evidence of Mehmet Raif Hji Mullayim, 18th May 1948. Examination.

*In the
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No. 12.
Evidence of
Mehmet
Raif Hji
Mullayim,
18th May
1948,
Examina-
tion,
continued.
Cross-
examina-
tion.

days. From Saturday afternoon to Sunday morning. On Sunday night to Monday morning, from Monday afternoon Elia start taking it. Tuesday afternoon Petra takes it and Wednesday afternoon again Petra takes it. In all, four days in a week. Petra has the right to irrigate until the rising of the Pleiads and this is until the 15th August, old style calendar. I went as far as Ayios Nicolas. I visited the place.

Court: You went only once?—A. 3-5 times I have been to this place. I usually accompanied the water guards and usually diverted the water.

XX'nd by Mr. Hadji Pavlou :

I own properties. Our village Petra had water guards to guard our water. Petra is a long distance from Ayios Nicolas but we go there by animals or car. We have confidence in the people whom we appointed as water guards but one can never be too sure. I have not kept a note of the times I visited Ayios Nicolas. In all I visited this place 5-10 times. When I was entitled to the water I used to go there sometimes. I do not remember. I cannot tell you up to what spot I went on the first occasion I visited that locality. I do not remember up to what spot I went the last time I visited this place. I did not visit this place in any case after 1941. Kakopetria people take the water from the rising of the Pleiads to the sunrise. We take the water from the dams from which we are entitled to take the water. I was never present at the rising of the Pleiads or Orion on any occasion when the Kakopetria people took the water. When I have a surplus of water then I sell that water to the property owners below my village. I do not remember selling to any Tembria inhabitants water. I do not remember selling water to Sina Oros inhabitants. I sold water to Petra people whenever I had surplus from my own properties and those were owners of neighbouring fields. I do not remember about Tembria or Sina Oros. I do not remember selling water to Galata people. I have been present almost every time that the water was diverted at the sluices of Evrykhon, Korakou, Vrokhos and Paliomylos. I know Karkotis river. I know Karvounas river. They both spring from Troodos. Our title deeds describe that the river comes from Troodos. We hear it as Karkotis river. I know it as Karkotis river. It springs from Troodos. Karkotis flows down from Troodos. The one river comes from Ayios Nicolas and the other from (Garilli) Karydhi. The two rivers join below Kakopetria.

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No. 13.
Evidence of
Christakis
Savvides,
18th May
1948.
Examina-
tion.

No. 13.

EVIDENCE of Christakis Savvides (Witness No. 9).

CHRISTAKIS SAVVIDES, sworn.

40

Land Registry Clerk, Nicosia. A survey was carried out in Kakopetria village and there is a survey plan.

Court: In what year?—A. I do not remember exactly.

Examination continued: In that survey plan various tributaries which spring from Troodos appear. The area from Kakopetria up is shown in these 3 plans.

Mr. Houry : I object to the production of these plans Your Honours.

Court : Did you prepare them yourself ?—*A.* No.

Q. You copied them from where ?—*A.* It was prepared by the Survey Department.

Mr. Houry : It is hearsay and they are not original maps and the gentleman here knows nothing of the preparation of these maps. It is on the Plaintiffs to show on what ground he wishes these documents to be produced.

Examination continued : This is a copy, certified true copy, of the
10 original ones.

Mr. Houry : I would like to make my ground clear Your Honours.

If it is merely to produce geographical conditions of the land probably I may revise my objection but if it is to prove names of the rivers, etc., I shall stick to my objection.

Court : You say that these are true copies from the originals ?—*A.* Yes.

Q. And it is taken from the Survey Department ?—*A.* Yes.

Q. And is this copy made, look at it, by the person who has authority to keep it ?—*A.* Yes and it is certified to be true copy and sealed with the
20 seal of the Department.

Q. Who keeps the originals ?—*A.* (In the meantime another question has been put to him) This is signed by the director.

Court : Production admitted under Section 17 of Law 14 1946.

Examination continued : I produce them. *Put in marked Exhibit 1* (*A, B, C*). As an L.R.O. clerk I know that certain Petra people are entitled to water from Karkotis river. Some of the Petra inhabitants have title deeds in their names for this water and some of them are entitled to registration. There is a book called Field Book. The field book is written in Turkish. The book was compiled in 1893 by clerks sent out, by Tapoo
30 Officials. It was prepared in 1893 and that book is giving particulars. That was prepared locally and in performance of their duties, part of their duties.

Mr. Houry : I object.

Examination continued : The whole book refers to Petra water.

Mr. Clerides : The idea is to produce it and to show how at the time the inhabitants of Petra who had water registered in their names how that water was described. That is why I want the production of this old register.

Mr. Houry : My grounds are these. It does not appear to be a
40 public document. It does not appear to be connected in any specific law. The witness himself knows nothing about it except that it was probably found in the archives of the L.R.O. It is not a register and it is not an extract of the register. And further it is a hearsay report.

Mr. Indianos : Before I answer Your Honours I would like to put some questions to the witness first.

*In the
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*Plaintiffs'
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No. 13.
Evidence of
Christakis
Savvides,
18th May
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*In the
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Evidence of
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tion,
continued.

Q. The small book which you have and you refer is the register of Petra water, the original register?—A. Yes.

Q. The field book refers to what?—A. Refers to the work done at the local enquiry in 1893 and it concerns properties of Petra especially this one is for water.

Q. The book which you have in your hand is the original or copy?—

A. It is the original.

Q. And it refers to what?—A. To the water of Petra.

Q. So that register was prepared under instructions?—A. Yes.

Q. Under Law?—A. Under the instructions of the Director. 10

Q. Was it under any law that it was prepared?—A. I think so.

(Adjourned for a short time to enable the witness to obtain more information.)

Q. How it acquired the name field book?—A. Because it was prepared in the field locally that is why they called it so.

Court: Are you the custodian?—A. The chief clerk of the L.R.O. and I am a member of the Land Registry Office.

Examination continued: In this book there are records referring to Petra village and particularly to the ownership of Petra water. In our office we have books called field books. These books are called field books 20 because they were prepared on the spot in the field.

Court: Under what law?—A. 5 of 1880.

Examination continued: This field book refers to the ownership of Petra water.

Court: Were the entries entered by any officer of your department carrying out his duties under that law?—A. Yes, certainly.

Q. Was that book in custody of . . .?—A. Chief clerk of L.R.O. Nicosia and his staff.

Q. And you are a member of the staff?—A. Yes. This book was made in 1893. 30

Examination continued: It is on the basis of this books that we issue the title deeds. On the basis of the field book we prepare the records called Land Registers. We have land registers for the village of Petra. Petra Land Registers have been prepared on the basis of this field book. Both state property and water.

Cross-examination:

Mr. Houry: *Cross-examining the witness on these points for the admission of the field book*:

Q. Is this book the original?—A. Yes, this book I think is complete for water rights. I am 40 years old. This book was prepared before my 40 birth.

Q. Now you yourself do not know who prepared this book?—A. No. I know that it is one of the officials of the L.R.O.

Q. When was the first time you saw this book?—A. This book particularly I saw for the first time when I worked for the local enquiry at Petra village two or three years ago.

Cross-
examina-
tion.

Q. You are not in a position to say whether that book was kept from the time it was prepared up to 3 years ago?—A. It is kept in the office.

Q. You yourself are not in a position to say?—A. It is kept in the office in a special place.

Q. Now tell me it purports to be a record prepared in the field in connection with water rights of Petra?—A. Yes.

Q. Under what section of the law that book was prepared?—A. 5 of 1880.

Q. What section?—A. I do not know the section. The whole law.

10 Q. As land registry clerk do you know whether any water rights at Petra were ever registered?—A. They are registered.

Q. Since when?—A. The first registration of water rights of Petra was on the 1st April, 1892, and even earlier but we cannot give any earlier dates because the books have been destroyed.

Q. That book was prepared by unknown persons?—A. Yes.

Q. I do not know Your Honour if we will rely on this law exclusively to have that or it is an ancient document.

Witness : Yes, it is an ancient document.

20 *Mr. Houry* : I shall maintain my objection your Honours. If he does not know the name he cannot say anything beyond that.

Court : But he said a member of the L.R.O.

Mr. Houry : I will cross-examine him.

Q. You do not know who prepared that book but it was a member of the L.R.O.?—A. Yes.

Q. I will give you the chance to correct yourself. Is it possible that you could not know who is the man and yet you affirm on oath?—A. We have thousands of similar books like this one. It is kept in our office and it is supposed to have been prepared by the officials of the department.

Mr. Houry : I maintain my objection.

30 *Court* : Objection overruled.

(*Put in and marked Exhibit No. 2.*)

Examination continued (Witness taking in his hand the land register for Petra village) : This is the land register of Petra. It is kept in the L.R.O. It is kept by the Chief Clerk and the members of his staff under his directions. *Examination, continued.*

Q. Do you know under what law this land register was made?—A. Under the same law.

40 Q. It is under general registration?—A. Yes, this book is copied from the field book. This land register was prepared after 1893. The land register has been copied from the field book Exhibit 2 as well as other books. In this land register there are entries which were made on the 21st June, 1894. The registered owner is Theoris Panayi. This register was done again by a tapou official.

Court : During the performance of their duties?—A. Yes.

In the District Court of Nicosia.

Plaintiffs' Evidence.

No. 13.
Evidence of Christakis Savvides, 18th May 1948, Cross-examination, *continued.*

In the
District
Court of
Nicosia.
—
Plaintiffs'
Evidence.
—
No. 13.
Evidence of
Christakis
Savvides,
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1948,
Examina-
tion,
continued.

Examination continued : There is another entry on 9.8.1899. There is also another entry 9.2.1894 and 3.1.1896. These entries in the land registers were made on the basis of the field book Exhibit 2. I produce these three entries. Put in marked Exhibit 3 (A), (B) and (C). Serial No. 2512, 2513 and 2514. I have a file in my possession regarding the local enquiries made in respect of Karkotis water. This local enquiry was made under law 5 of 1880. This file is kept in the head office in the land registry. I am not in a position to say whether this local enquiry was carried out on the motion of the Director of the Land Registry or on the application of the interested parties. There is no application on behalf of any individual in the file. This local enquiry was carried out by Mehmet Salim who was a surveyor of the L.R.O. He carried out local enquiry on the 10th August, 1901. He is dead now. This record has been kept since that date in the office of the Director of the Land Registry. This said Salim prepared a plan which is kept in the record in the file. 10

Court : Was the preparation of the plan part of his duties after carrying out the local enquiry?—A. Yes. If necessary a plan is prepared. This plan I have referred to earlier is signed by M. Salim dated 10th August, 1901. This plan shows all the dams from Frantziko to Petra. Salim made a report as well on the same date. This report refers to the use of the water of Karkotis river. You brought this file. 20

Mr. Houry : I object.

Court : Grounds for objection please.

Mr. Houry : Because they want to produce a file Your Honours.

Mr. Indianos : Not a file but a report and the plan of the local enquiry.

Mr. Houry : The report is not evidence because it was not made by a man who was invested by law and that his duty was to decide on the rights of the parties. It is hearsay and it was not connected in any shape or form with the present litigants. If the plan or report was made on the application of the Plaintiffs I can understand that. There is some connection with the case but it would be risky in my humble submission that the plans and report made in this way should be evidence against us. 30

Court : You want to refer to any law, Mr. Houry ?

Mr. Houry : Cockle's Cases and Statutes on Evidence, 6th edition, page 215, *Chambers v. Bernasconi*.

“Declarations in the course of duty are evidence only of the precise facts which it was the writer's duty to state or record, and not of other matters which, though contained in the same statement, were merely collateral.” 40

In order to arrive at the precise reasons to that we have to enquire what led up to that because if Mr. Hadji Pavlou puts an application against Mr. Tavernaris and the L.R.O. clerk goes and performs a plan surely the difference was between Mr. Hadji Pavlou and Mr. Tavernaris and I am not interested the slightest bit.

Court : Any other grounds, Mr. Houry ?

Mr. Houry : These are my grounds.

10 *Mr. Indianos* : In addition to the authority cited by my learned friend which I submit is in my favour I beg to refer to Phipson on Evidence, page 344, 7th edition, where it is clearly stated : " The general ground of reception . . ." What the witness stated was that Salim was a Government official that it was part of his duties to prepare the plans that he carried out this local enquiry on the application of anybody but on instructions from his superiors and in addition to what I have stated from Phipson Your Honour there is our own Law which is very definite and very clear. Law 14 of 1946 Section 4 (1) and 4 (1) (b). " In any civil proceedings where . . ." And the witness states that the mukhtars of the villages concerned were present and azas were present etc. " Subject to Subsection 2 of this section if the maker . . ." We have our own law. In this particular case the maker of the statement is dead. He was a Government official. He was ordered or instructed by his superior authority to carry out a local enquiry in the presence of the mukhtar and azas and in the course of their duties.

*In the
District
Court of
Nicosia.*

*Plaintiffs'
Evidence.*

*No. 13.
Evidence of
Christakis
Savvides,
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tion,
continued.*

Court : This is the fact alleged by you. You have to find out how this local enquiry was held if it was held.

20 *Mr. Indianos* : If it is on the application of an individual that he carried out the local enquiry or in his official capacity, we have to find out one or the other. This report is addressed to the Registrar General.

Court : Time given to the witness to go and tell the Court how this local enquiry was held and whether it was for record purposes or otherwise.

Resumed :

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. 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.

30 *Q.* Was it part of his duty to prepare (a) plan (b) report ?—*A.* Yes.

Court : Do you want to cross-examine on these three points, Mr. Houry ?—*A.* Yes.

Cross-examined by Mr. Houry :

Q. The authority came from the Director of the Land Registry to Salim Eff. ?—*A.* Yes.

Q. Have you got that authority ?—*A.* The same instructions were given to Yusuf Zia.

40 *Court* : You want them ?—*A.* For the purpose of deciding the admissibility we can take that, Your Honours. *Put in marked Exhibit No. 4.*

(Interpreter reads out the instructions given to Yusuf Zia, Exh. 4.)

Q. Yusuf Zia was the head of the department ?—*A.* I do not know.

Q. Nothing addressed to Salim Eff. ?—*A.* Maybe he got the instructions verbally.

Q. Is there anything about Kakopetria ?—*A.* Yes.

*In the
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Court of
Nicosia.*

Mr. Houry : In my submission there is no commission at all given to Salim to go to Kakopetria and decide on the water rights of the rivulets there.

*Plaintiffs'
Evidence.*

Court : The idea is whether the enquiries were under instructions or not.

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Evidence of
Christakis
Savvides,
18th May
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Examina-
tion,
continued.

Q. You do not know if Yusuf Zia was an ex-tapou man?—*A.* I do not know.

Mr. Clerides : He must have been the Chief Clerk of the L.R.O.

Mr. Indianos : That can be proved from the Blue Book.

Mr. Houry : I maintain the same objection. 10

Court : Objection overruled. *Plan and report put in marked Exhibit Nos. 5 and 6.* Reference Phipson on Evidence, 7th Edition, page 344, and also page 345. Relevant parts read out.

Cross-
examina-
tion.

XX'nd by Mr. Houry :

Before I cross-examine him I would like to request the Court to give us time to look at these papers.

Court : You may recall the witness when you go through this ; any question that may arise from these exhibits you may recall him at any time necessary.

Mr. Houry : Yes, Your Honour. 20

Q. You produced these plans Exhibit 1 (A), (B) and (C)?—*A.* Yes.

Q. Is the village of Kakopetria at all in this?—*A.* No, it is above the village.

Q. Does Potamos tou Ayiou Nicola appear on this plan anywhere?—*A.* Kokinorotsos appears on the plan ; Ayios Nicolas is higher up and does not appear in the plan.

Q. Kokinorotsos comes with another rivulet which is below the present Chrome mine ? You have been there at all, you know the place ?—*A.* I have been up there, but I have not noticed that.

Q. I have heard about Kannoures river, but I have not made any 30 local enquiry. I know this river. I know the river of Ayios Nicolas.

Q. It is the river that runs down the Chrome mine, Ayios Nicolas down to Kakopetria village?—*A.* Yes.

Q. Does that river of Ayios Nicolas appear on the plan you produced ?—*A.* Yes.

Q. Would you mind showing it to me?—*A.* Yes. (*Shown to the counsel.*) I know Ayios Nicolas river as Kokinorotsos. I know Ayios Nicolas river as Kokinorotsos river.

Q. Is there any Ayios Nicolas river?—*A.* I know that there is one river there which is called Kokinorotsos, if they call it Ayios Nicolas I do 40 now know. It passes higher up by the Chrome mine.

Q. According to you Kokinorotsos goes down to Kakopetria?—*A.* I have not made any local enquiry in respect of this.

Q. Is it from your personal knowledge or you carried out local enquiry ?—*A.* No local enquiry.

Q. Are you of Kakopetria?—A. I usually go there.

Court: You have been a clerk in Kakopetria?—Yes, I made local enquiries at Kakopetria.

Q. For how many years?—A. For the last two-three years.

Q. After the institution of this action?—A. Yes.

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Re-examination by Mr. Clerides:

Kokinorotsos river is shown on these two plans Exhibit 1 (A) and (B). As shown in the plan Kokinorotsos river flows into Karkotis river.

Q. In this plan river Karkotis is shown?—A. There is a name Karkotis,
10 I do not know if it is the river Karkotis.

Q. Does it say Karkotis in this plan?—A. It says so, I see it now.

Q. Is Ayios Nicolas monastery shown in this plan?—A. Yes.

Q. And the river passing by Ayios Nicolas monastery, how is it called in this plan?—A. Its name is Karkotis potamos again.

Q. Is the river in this plan above Ayios Nicolas and below Ayios Nicolas described in the plan as Karkotis potamos?—A. From what I see here.

Court: If an expert is required to read the plan, it is another question?—A. I can easily read the plan, Your Honour.

20 To Court: I can easily find from the Head Office the dates when it was surveyed. The survey might have been done earlier. It was completed in 1926.

Q. I want the official document when it was made?—A. You want me to go and get the information now?

Q. If you can find it in one or two minutes?—A. No.

19th May, 1948.

Mr. CHRISTAKIS SAVVIDES, witness 9, recalled.

Reminded of his oath.

30 From the extracts of the register plan No. 33/20 was made by A. Paraskevas who commenced work on the 25.5.25 and finished 20.6.25, Exhibit 1 (A).

Mr. Houry: I would like to put one question or two because this gentleman spoke of earlier registration in 1894. The book was not put in as evidence only the entries were put in so I would like him to state what was the original description of the water and how and why was it corrected in red ink? How, why and when?—A. It is initialled by the Director I cannot say how it was corrected.

40 Witness continued: Also plan No. 37/28 commenced on 14.9.25 and finished on 3.10.25 also by A. Paraskevas, Exhibit 1 (B). Plan No. 37/36 commenced on 6.9.26 and finished 25.9.26 by P. M. Ali, Exhibit No. 1 (C).

The first entry was one day in January, 1896, Exhibit 3 (A). This registration stands up to this day.

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ation.

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Evidence.*

Mr. Houry : I think we better have on the record the boundaries of this registration which read as follows : "Running from Karkotis river on every 22 days from the Mosque division." Entry marked 3 (A) gives as boundaries : "Running through Karkotis river on every 22 days from the Mosque Division." 3 (B) is exactly the same description. 3 (C) is also the same description.

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Evidence of
Christakis
Savvides,
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continued.

Mr. Houry : Can you trace this registration from the field book since you say that they are taken from the field book ?—A. Yes.

Q. Can you read the description ?—A. (The writing being in old Turkish style handed over to Mr. Houry to read) Corresponding entry in the field book Exhibit 3 (A) is marked Exhibit 2 (A). 10

Mr. Clerides : I would like Your Honour to have it translated from the field book.

(*Description read and translated.*) "Running water of 30 minutes on every 22 days from the Djami Nemetti Division running through Karkotis river of Troodos."

Witness : The words of Troodos do not occur in the tapou register. The same for Exhibits 3 (A), (B) and (C). Corresponding entry in the field book of Exhibit 3 (B) is marked 2 (B). This is also running water of 30 minutes from Djami Nemetti on every 22 days running through Karkotis river of Troodos. Exhibit 3 (C) is also for running water for 45 minutes from Djami Nemetti Division on every 22 days running through Karkotis river of Troodos. Again here the words "of Troodos" are omitted in the register. 20

Mr. Houry : Can you inform their Honours when the words "of Troodos" were introduced in the tapou register ?—A. They were left out. As a matter of fact they have taken the description from the field book which was made locally.

Q. I am asking you when ?—A. I cannot say.

Q. Which is the older ?—A. Field book, Exhibit 2, is the older register and from there they were copied in the land register. Generally in every case in the field book the Karkotis river is described. 30

Q. Why all the registrations taken in the tapou register omit the words "of Troodos" ?—A. I cannot say.

Q. Did you find any where in the tapou register in your search ?—A. I did not make any special search to ascertain as far as what I saw here in these 3 entries, Exhibit 3.

Q. Can you point out any original registration in the tapou register where the words "of Troodos" occur ?—A. I do not know. I have to go through and ascertain. 40

Q. If you find any original registration "of Troodos" to occur I shall ask subject to Their Honours' Court approval to come and tell Your Honours that there is such a thing.

Court : Later he may.

Mr. Clerides : Registration No. 8436 how is described there ?—A. 8436 dated 24th December, 1929. (*Put in marked Exhibit 7 (A).*)

Q. How is the water described there ? (*Description read out.*)

Q. See registration No. 8071 ?—A. Yes. (*Put in marked Exhibit 7 (B).*)

Q. Is the registration in the name of Petra persons again ?—A. Yes.

Q. How is the water described ?—A. Running through Karkotis river having its sources from Troodos.

Q. Registration No. 8211. Is this registration in the name of Petra people ?—A. Yes.

Q. How is the water described ?—A. Running through " Karli Dag " Karkoti river on every 22 days. (*Put in marked Exhibit 7 (C).*)

10 Q. Take the registration No. 7226 of 30.11.1917. Is it in the name of Petra people ?—A. Yes. (*Put in marked Exhibit 7 (D).*)

Q. How is the water described there ?—A. Running from Karkotis river of Troodos.

Q. Take registration No. 8648. Is this registration in the name of Petra men ?—A. Yes.

Q. How is the water described there ?—A. Running through Karkotis river of Troodos.

Mr. Houry : Through leave of Court :

Q. Take registration 8436 please, Exhibit 7 (A) ?—A. Yes.

20 Q. This registration is dated 24th December, 1929 ?—A. Yes.

Q. And it is taken from a previous registration ?—A. Yes, 7760. The previous registration is dated 28th March, 1923, and has similar description of boundaries.

Q. And this registration derives again from the previous registration No. 7742 ?—A. Yes.

Q. This is dated 24th January, 1943 ?—A. Yes.

Q. Exactly the same description ?—A. Yes.

Q. This again derives from two previous registrations, is that so ?—A. Yes.

30 Q. These two registrations are 2510 and 2511 ?—A. Yes.

Q. But approximately in what year they were entered ?—A. Soon after the field book.

Q. How is the description here ?—A. Running through Karkotis river on every 22 days from the Mosque Division.

Q. Now can you explain to Their Honours how is it that this description changed while in Kotchan No. 2510 and 11 description is given as running through Karkotis river from the Mosque Division ?—A. I cannot say.

40 Q. Can you say why the words having its sources from the spring in Troodos were introduced in the subsequent registration ?—A. I cannot say.

Q. Can you produce any local enquiries that give any indication of the change in the boundaries ?—A. We have got to examine all the records to reply this question.

Q. See now registration 8071 Exhibit 7 (B) it is dated 28th May, 1926 ?—A. Yes.

In the District Court of Nicosia.

Plaintiffs' Evidence.

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Evidence of
Christakis
Savvides,
19th May
1948,
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continued.

*In the
District
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*No. 13.
Evidence of
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Q. And it derives from registration 7758 ?—*A.* Yes.

Q. 7758 is dated 28th March, 1923 ?—*A.* Yes.

Q. And it is the same description of the boundaries running through Karkotis river having its springs on Troodos ?—*A.* Yes.

Q. It is derived from 7740 ?—*A.* Yes.

Q. Exactly the same description ?—*A.* Yes.

Q. It is derived from 7082 and 7083 ?—*A.* Yes.

Q. They are dated 21st November, 1916 ?—*A.* Yes.

Q. And the boundaries are "running through Karkotis river called Ay Yanni Nebetti" Registration 7083 ?—*A.* Running through Karkotis 10 river called Yianni Nebetti.

Q. Can you explain to their Honours why this change in the description of the boundaries occurs in the subsequent registration ?—*A.* No.

Q. See now registration 8211, Exhibit 7 (C) ?—*A.* Yes.

Q. Previous registration is 6165 ?—*A.* Yes.

(Ten minutes' adjournment to allow the clerk to fetch another register.)

Q. It is derived from previous registration No. 6165 ?—*A.* Yes.

Q. Dated 4th January 1911 ?—*A.* Yes.

Q. This is derived from Registration No. 5940 dated 7th February 1910 ?—*A.* The description is again exactly the same. 20

Q. This is derived from 5387 dated 19th June 1906 and it is exactly the same ?—*A.* Yes. This is the original registration no previous registration.

Q. Take now registration 7226 ?—*A.* Yes, Exhibit 7 (D). It is dated 30th November, 1917. "Running through Karkotis river of Troodos."

Q. It is derived from 7054 ?—*A.* Yes. Dated 7th October 1916 and has exactly the same description "running from the Karkotis river of Troodos" and this is original registration.

Q. See registration No. 8648. (Put in marked Exhibit 7 (E).) It is 30 dated 28th November 1931. "Running through Karkotis river, of Troodos" ?—*A.* It is derived from registration 8641 which is dated 1st September, 1931.

Q. The description is exactly the same. This is the original registration ?—*A.* Yes.

Q. Nowhere in your files concerning this water were you able to trace any firmans or judgments of any Court ?—*A.* We did not examine.

Q. Were you asked to examine ?—*A.* No.

No. 14.

EVIDENCE of Yiangos Petrou (Witness No. 10).

40

YIANGOS PETROU, sworn.

I am of Evrykhou. I am 77 years old. I am a farmer. When I was younger I was a water guard. I served as a water guard in 1930. The village Commission of Evrykhou used to appoint me as water guard.

*No. 14.
Evidence of
Yiangos
Petrou,
19th May
1948.
Examina-
tion.*

- I was appointed to guard Evrykhou water which comes from Troodos from the Karkotis river. Many villages irrigate from the water of this river. I worked for 30 years as water guard. I know the rights of the villagers who are entitled to irrigate from this village. Kakopetria is entitled to irrigate from the rising of the Pleiads every day of the week except Tuesday. They have the right to make use of this water until the time when the sun is visible over Troodos. They take the water at the rising of the Pleiads up to the 15th August old style and then they start with the rising of the Orion. Kakopetria takes this water from Ayios Nicolas, Frantziko, two Karydhi and Apliki dams. Galata and Sina Oros take their water at the rising of the Pleiads. The village of Galata take their water from Kapatthokas, Vassiliko, Granos, Sinarkotis and Maerys. Much water is left in the river after these villages have taken their water which they are entitled. The three villages of Evrykhou, Tembria and Korakou have the right to divert the water for their own use when the sun is visible over Troodos. My duty as water guard was to go to Frantziko to guard the water and wait until the sunrise in order to divert the water. When the water at Frantziko is diverted all the water in all the channels is diverted. The three villages of Evrykhou, Tembria and Korakou are entitled to make use of this water until the time when the shadow of a man is 7 feet on the ground. At the sluice of Evrykhou, Tembria and Korakou. When Petra people take the water after that. Petra people are entitled to take it on four days of the week. Saturday evening, Sunday and Monday afternoon, Tuesday afternoon and Wednesday afternoon. Monday afternoon to Tuesday sunrise is left to Katydhata village which is entitled to take the water. Friday afternoon we take the water we Evrykhou people. Thursday afternoon Elia takes the water. Saturday afternoon Petra takes the water. Sunday afternoon Petra takes the water. Monday afternoon Petra takes the water. (Witness corrects it and says that Elia takes it.) Tuesday afternoon Elia takes the water. (Witness corrects and says Tuesday afternoon Petra takes the water.) Wednesday afternoon Elia takes the water. (Witness again corrects himself.) Petra takes the water. Thursday afternoon Elia takes the water. Elia takes the water on Tuesdays and Fridays. Elia begins at daybreak. Evrykhou takes the water every day except Tuesday. Evrykhou takes the water from the time when the sun is visible over Troodos until the man's shadow is 7 feet on the ground. On Mondays our village take the water until the time when the shadow of a man is 7 feet, when Elia takes the water. Elia takes the water until the sun is visible in the morning. On Tuesday morning, sunrise, Linou takes the water. Tuesday afternoon when the shadow is 7 feet on the ground Petra takes the water.

XX'nd by Mr. Hadji Pavlou :

- My duty as water guard for 30 years was to go to the dams when the sun was visible over Troodos to divert the water towards Evrykhou. To the Frantziko I used to go there in the morning to wait for the sun to appear. I used to go there at dawn. An hour and a half before sunrise. I used to go and wait on the spot. Kakopetria people are entitled take the water whenever the Pleiads rise. Kakopetria people had their own water guard. I was never present when the Kakopetria people diverted the water at the rising of the Pleiads. At the rising of the Pleiads they took the whole quantity of the water in the river. When

*In the
District
Court of
Nicosia.*

*Plaintiffs'
Evidence.*

*No. 14.
Evidence of
Yiangos
Petrou,
19th May
1948,
Examina-
tion,
continued.*

*Cross-
examina-
tion.*

In the District Court of Nicosia.
 Plaintiffs' Evidence.
 No. 14.
 Evidence of Yiangos Petrou, 19th May 1948, Cross-examination, continued.

Kakopetria people diverted the water at the Frantziko sluice no surplus water was left in the river to go down. My duty as water guard was to divert the water at sunrise for Evrykhou to take their water and it was my duty to remain on the spot until the time when Petria people came and took delivery of the water when their turn came. After Kakopetria people had diverted the water some water was left in the river coming down from Karkotis river Ayios Nicolas dam but none from the Frantziko sluice. I was responsible for the Frantziko dam myself. There were other water guards who were going at the same time with me and they were responsible for Vassiliko, 10 Kapathokas dams and we used to divert the water simultaneously. I used to divert the water at the Frantziko dam for 30 years regularly every year. For the months of June, July, August. Beginning of June. Yiannis Papa Antoni water guard of Kakopetria was present on many occasions when I diverted the water. He saw me diverting the water. When our turn came I was alone. Yiannis water guard never asked me what are you doing here diverting the water. My duty was to divert the water at Frantziko and Ayios Nicolas. I was alone. I used to go alone. To Ayios Nicolas. I went there on many occasions. I used to go there regularly. The tenant of Monastery property used to see me 20 there. The tenant of the Monastery's properties is Yeorghis Hji Marias. He is dead. This tenant of Monastery's property used to irrigate the property and when we went there he used to allow us to divert the water. Before this Yeorghis there was another tenant called Keramidhas. He used to see me diverting the water. He is dead. He did not die over 30 years ago. I know the place at Ayios Nicolas locality. The rivulets Kokkinorotsos and Kannoures from the springs of Troodos mountains are known as Karkotis. It is called Potamos tou Ayiou Nicola but it is Karkotis. I know the river as Karkotis river and not Ayios Nicolas river. I have never heard that river being called Ayios Nicolas river. I have 30 been to Karvounas river. I used to go there every morning. I used to divert the water at the dams of Karydhi and Apliki. I was alone. I was not seen by any other Kakopetria people while diverting the water there. I do not know if the Pleiads is visible at this time of the year. To-day is the 19th of May. I have not gone to see for the Pleiads now I am an old man and I cannot see very well. I was responsible for the Evrykhou water only. Other water guards were responsible for the sluices of Tembria and Korakou.

Re-examination.

Re-examination by Mr. Clerides :

It is now 30 years that I have stopped being interested in this water. 40 I served as water guard for 30 years and it is 30 years I have not been interested. I have known this water for 48 years.

No. 15.
 Evidence of Djevdet Mirata, 19th May 1948, Examination.

No. 15.

EVIDENCE of Djevdet Mirata (Witness No. 11).

DJEVDET MIRATA, sworn.

I am an L.R.O. clerk since 1925. I know the field book Exhibit 2. This book was prepared in 1893. As an L.R.O. clerk I know that this field book used to be copied for the land registers. The land registers

were copied in English. The field books were written in Turkish. From my experience as L.R.O. clerk I can say that in this copying of the field book into the land register mistakes sometimes were made in the translation because the clerks at the time did not know English very well. When a person wanted to obtain a title deed he used to come to the L.R.O. and pay the fees and a copy of the land register would then be made and handed over to the person interested. This practice continued for a few years. Later on when there was a dispute as regards the property in question then a local enquiry would be ordered to be carried out before the registration. There were also cases where other persons were objecting to the registration and a local enquiry was carried out.

The title deeds were issued as a result of the local enquiries and after the local enquiries were held. The clerk who had to carry out the local enquiry took with him the field book and not the land register. This is the practice up to the present day. When there was a difference in the description between the field book and the land register the basis was always the field book. This registration No. 5387 concerns water of Petra.

The fee was paid in 1906. A local enquiry was carried out in respect of this registration.

20 Registration No. 7054 is not the original registration. It was made after application. I cannot say this moment whether a local enquiry was made or anything else. I will have to look up my files. Registration No. 8641. There is no previous registration. This is original registration. This was made on application in 1930. A local enquiry was made in 1930. It is by inheritance division.

XX'nd by Mr. Houry :

Q. Can you point out any registration which was made directly from the field register without any local enquiry?—A. Definitely I may show some of them, specially those which were issued.

30 Q. Please show us these registrations without any local enquiry whatsoever?—A. Registration No. 2593 is one of the cases where registration was made without local enquiry. We had some registers where this registration is shown, but these registers are destroyed. They were very old, prior to the field book. They proposed to make a new registration and at that time this book was prepared.

Court : What I understand you mean to say that in the field book the registrations made are not altogether new but they may be a substitute of some old one?—A. Yes.

40 *Mr. Houry :* It is very far from being a field book then?—A. If there has been any inconsistency with any registration, then they cancelled it. We had registrations before it, no doubt.

Mr. Houry : I have no doubt, Your Honour, that the registration from the Turkish time is as far back as Yioklama.

Court : Is it a kind of Yioklama?—A. No general registration.

XX'nd :

Q. Of what?—A. Of Petra village for the whole property of Petra village. All properties of villages were recorded in this book and serial numbers were considered as registration numbers.

*In the
District
Court of
Nicosia.*

*Plaintiffs'
Evidence.*

*No. 15.
Evidence of
Djevdet
Mirata,
19th May
1948,
Examina-
tion,
continued.*

*Cross-
examina-
tion.*

*In the
District
Court of
Nicosia.*

Court : Are you quite sure that no local enquiry was held in respect of that, in view of the fact that there are some words added to the entry in addition to what appears in the field record ?

*Plaintiffs'
Evidence.*

Mr. Houry : I want him to show any indication that this field book was taken as the only source of authority for effecting registration in the tapou register without the aid of any records. I personally believe that that was not taken seriously as being the source of authority for recording.

No. 15.
Evidence of
Djevdet
Mirata,
19th May
1948,
Cross-
examina-
tion,
continued.

Court : Can you find any particulars to correspond exactly to this one ? Show us from where the registration was made ?—*A.* From the 10 field book.

XX'nd :

Q. Or any departmental order that this should be held the basis of the field record to be recorded, the basis of the land registers.

Q. Show us a registration taken directly from this book ?—*A.* 2593.

Q. But 2593 was written afterwards ?—*A.* I do not know.

Q. I put it to you that these serial numbers were inserted afterwards and not at the time ?—*A.* No at the same time.

Q. How do you know ?—*A.* Because they agree with each other.

Q. But the numerals are written in Turkish characters and the serial 20 number in Latin numerals ?—*A.* Yes.

*Re-examina-
tion.*

Re-examination by Mr. Clerides :

Entries in the field record which were cancelled was the cause of a local enquiry.

No. 16.
Evidence of
Behlul
Moustafa,
19th May
1948.
Examina-
tion.

No. 16.

EVIDENCE of Behlul Moustafa (Witness No. 12).

BEHLUL MOUSTAFA, sworn.

I am of Korakou. I am 79 years old. I own properties. I own fewer properties now. I own irrigable properties. They were irrigated from Karkotis water. Many villages irrigate from the water of Karkotis. 30 I know the time that the several villages are entitled to take water. I know this because they are doing this for a long time. I used to go myself. I have been as far as Kakopetria and I have seen for myself. I have never served as water guard myself. It is about 60 years that I have known this water and I have been irrigating from this water. At the rising of the Pleiads the following villages take the water : Kakopetria, Galata, Sina Oros, Kalliana, Evrykhon, Tembria and Korakou. Kakopetria has the right to make use of this water at sunrise when the sun is visible over Troodos. If any water is left Galata takes the water and if any water is left from there then Sina Oros takes it. Evrykhon, Korakou, Tembria are entitled 40

- to take the water from sunrise. Before sunrise Evrykhon, Tembria and Korakou are not entitled to divert the water but if any surplus is left from the other villages then they may take it. Evrykhon, Korakou and Tembria are entitled to make use of the water until the shadow of a man is 7 feet on the ground when Petra takes the water. The shadow of a man at the sluice of Tembria, Evrykhon and Korakou. On Saturday afternoon Petra takes the water when the shadow of a man is 6 feet from Vrokhos sluice and when it is 7 feet at the sluice of Korakou. They also take the water on Sunday afternoon, on Monday afternoon Elia takes the water, on
- 10 Tuesday after sunset Petra takes the water, Linou is taking the water earlier on that day. There is a distance of 2 English miles from the sluice of Evrykhon to the village of Linou. On Wednesday afternoon Petra takes the water from the sluice. On Thursday afternoon Elia takes the water. On Friday afternoon Evrykhon, Tembria are taking the water. I used to go as far as Frantziko and Karvounas river and as far as Karydhi. We used to divert the water at the dams, wait there for some time until noon when we would leave. We used to divert the water in the morning at sunrise. I used to go before there but not as water guard. There were other water guards who used to stop at the sluice lower down. I did not
- 20 go always there myself. Sometimes I stopped at the dams lower down and on this occasion other water guards used to go to the upper dams with the owners.

Cross-examination by Mr. Hadji Pavlou :

- I was a farmer. I own properties. I did not own a mill at the time. I leased the mill later on. Korakou had its own water guard appointed by the village. At the time I have been referring they used to have one water guard but now they employ 2-3 water guards. They are paid by the irrigation division even now. The rights of irrigation attached to the property it is not a personal right (Hakki shirup). I was entitled to irrigate
- 30 a piece of property two donums in extent on Friday and another piece of one donum in extent on Wednesday. We irrigate our property every other year. But my property of two donums are irrigated every year. I used to go to the spot 2-3 times every year. I did not go to the café of Kakopetria but to the water. We used to take the water we were entitled to take it at sunrise. I was at the spot at sunrise. I used to go on foot at night time and arrive at the spot about time that we were entitled to get the water. I used to go to the spot alone. I saw Kakopetria inhabitants there. I do not know their names. It is a long time now. The co-villagers who were entitled to irrigate used to pay me for doing this for supervising
- 40 the diversion of the water. I went to the Karydhi sluice and also Apliki. People used to see me go there. I did not go to the Frantziko and the Karydhi sluice at one and the same time. I used to start for Karydhi dams at night time and arrive by daybreak, when it was time to divert the water. My father was irrigating my properties whenever I was going up to divert the water. We the Korakou people take the water from the Korakou sluice which is at Tembria. We irrigate from this water which we divert from the Tembria sluice. The water flows down from our village but I am not interested in the sluice below. I own property in Korakou village which I irrigate from Petra water. I know the dams and sluice of
- 50 Korakou area. I am not interested in other dams and sluices of villages below our village but I know them. I know the dams of other villages

*In the
District
Court of
Nicosia.*

*Plaintiffs'
Evidence.*

*No. 16.
Evidence of
Behlul
Moustafa,
19th May
1948,
Examina-
tion,
continued.*

*Cross-
examina-
tion.*

*In the
District
Court of
Nicosia.*

lower to our village and the times which they are entitled to take their water. I have been to these villages many times. I know the dams I have seen them myself.

*Plaintiffs'
Evidence.* *Re-examination by Mr. Clerides :*

I know at what time the village of Petra and Elia are entitled to take their water.

No. 16.

(Adjournment for half an hour.)

Evidence of
Behlul
Moustafa,
19th May
1948,
continued.
Re-examin-
ation.

No. 17.

No. 17.

EVIDENCE of Papa Yeorghis Tofi (Witness No. 13).

Evidence of
Papa
Yeorghis
Tofi, 19th
May 1948,
Examina-
tion.

PAPA YEORGHIS TOFI, sworn.

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I am of Petra. I am 73 years old. I own properties at Petra and water by title deed. This water to which I am entitled comes from Troodos in Karkotis. I know the villages irrigating from this water: Galata, Kakopetria, Sina Oros, Tembria, Korakou, Evrykhon, Flassou, Linou, Ayios Epiphanius, Katydhata and Kousouliotissa. I have known this water for over 43 years. We the Petra people are entitled to take water for four days a week. We have title deeds for this water.

On Saturdays we take the water from Palyomylos when the shadow of a man is 5 feet on the ground. On Sunday we take it from Korakou sluice when the shadow is 7 feet. From Evrykhon sluice at 7 feet again the same time. On Tuesday at sunset we take the water from Linou and Katydhata. On Wednesday afternoon we take the water when the shadow is 7 feet at Korakou, Evrykhon sluice. During the time that we are entitled to take the water no other person is entitled to irrigate from Karkotis river. We secure our rights in taking the water at the appointed time by sending our water guards to the spot in the morning. We send our water guards to the spots beginning from Kakopetria to Katydhata. We send 10 to 12 water guards for this purpose. It is about 5 English miles from Petra to Ayios Nicolas. From Petra to the sluice of Evrykhon and Korakou is $1\frac{1}{2}$ Cyprus miles that is $4\frac{1}{2}$ English miles. From the sluice of Evrykhon to Ayios Nicolas there is a distance of another $4\frac{1}{2}$ English miles even more. Kakopetria, Korakou and Evrykhon and other villages there are entitled to divert the water at the rising of the Pleiads. After the rising of the Pleiads we continue irrigating our property for so long as the water is flowing. The time of the rising of the Pleiads and Orion is not constant. When the Pleiads rise early then we irrigate our properties. We have water to irrigate our property in the daybreak when it rises later we have water only two hours after sunrise. If during the time that we are entitled to water that is from after the time that the shadow is 7 feet the water is taken by people above our village. Then the water which we are entitled to use is lost. During all the years that I have known this water and the Kakopetria inhabitants have not

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tried or attempted to make use of the water during the time that we are entitled to do. It was in 1941 for the first time that they claimed to take the water during the time that we meant to use it. After the institution of this action we did not send water guards to Kakopetria dams because they prevented us.

XX'nd by Mr. Hadji Pavlou :

I am not Plaintiff in the present case. My son is one of the Plaintiffs, Tofis Papa Yeorghis. We still continue after 1941 up to-day to have in our service water guards to guard water at the sluices but not Kakopetria.

10 We continue to irrigate our properties even to-day with whatever water is left in the river but not even one quarter of the water that used to be comes down. I was never one of the appointed water guards of my village but I used to go to the spot as an interested person.

I did not go there every day myself. Might be once or twice during the summer. Other people interested used to go there as well and take it in turns. I used to go together with other persons to the water. I do not remember the first time that I went to the water. I started going from 1922 since my marriage.

20 I stopped going there in 1930, when I became a priest. I used to go to the sluice of Tembria and Evrykhou.

I did not use to go in order to divert the water. I used to supervise the work of the water guards. I was present at Korakou, Tembria sluices at the time of the rising of the Pleiads but not at Kakopetria.

The Pleiads begin to be visible about the middle of May with old style calendar. I have not looked to see whether the rising of the Pleiads in June is about the same time with the sunrise. I do not know whether it coincides with the rising of the sun.

Re-examination : Nil.

Court : Case adjourned to 21st, 22, 24, 25 and 26th June, 1948.

30 *Court rose at 1.15 p.m. 19th May, 1948.*

(Sgd.) M. ZEKIA,
President, District Court.

No. 18.

EVIDENCE of Tofis Papa Yeorghis (Witness No. 14).

21st June, 1948.

Resumed.

For Plaintiffs : Mr. J. Clerides with Mr. Indianos.

For Defendants : Mr. M. Houry with Mr. Tavernaris. Mr. Haji Pavlou appearing at a later stage.

40 **TOFIS PAPA YEORGHI, sworn.**

I am Plaintiff No. 2. I am owner under title deed of the water of Petra. The owners of Petra water are entitled to 17½ hours every 3 weeks.

*In the
District
Court of
Nicosia.*

*Plaintiffs'
Evidence.*

No. 17.
Evidence of
Papa
Yeorghis
Tofi, 19th
May 1948,
Examina-
tion,
continued.

Cross-
examina-
tion.

No. 18.
Evidence of
Tofis Papa
Yeorghis,
21st June
1948.
Examina-
tion.

*In the
District
Court of
Nicosia.*

*Plaintiffs'
Evidence.*

No. 18.
Evidence of
Tofis Papa
Yeorgi,
21st June
1948,
Examina-
tion,
continued.

Each one of the owners has got his own title deed. This water has its sources from Troodos. The river which branches through the villages is called Karkotis. The registered owners of Petra water are entitled to take water on Saturdays, Sundays, Tuesdays and Wednesdays. We are taking the water at Paliomylos on Saturday afternoon when the shadow of a man is 5 feet on the ground, at Vrokhos 6 feet at the Sanidhi of Korakou and Evrykhon 7 feet. On Sundays we are entitled from the Sanidhi of Korakou when the shadow of a man is 7 feet again. It is the same on Tuesday and also on Wednesday. We are entitled to take the water until the rising of the Pleiads up to the 28th August. After the 28th August 10 up to the rising of the Orion. For the hours I have already mentioned we are entitled to get from the water of Karkotis and no one is entitled to get from this water during our hours. We appoint water guards in order to look after our interests. The distance from our village to the first dam of Ayios Nicolas is 12-13 miles. In 1941 we had the following water guards: Michael Anastassi, witness 1, Polis Tsingis, witness 4, and Hilarion Ioannou, witness 5.

These water guards made a complaint to us on the 27th May, 1941, and on the 28th May, 1941, on the 3rd July, 1941, upon these complaints some of the owners of the water went to Kakopetria among whom were 20 myself. Papa Christoforos Demetriou and Towlis Hadji Yianni. We went to Kakopetria and asked for the irrigation committee of Kakopetria. We saw Thrasyvoulos Ioannou, Defendant No. 1, and Yiannis Vassiliou, Defendant 4. We asked them if they were aware that they interfered with the right of the water at our turn and they said: "Yes," and they also said: "If you want to have coffee at the village well and good otherwise return back to your village." They said that they were entitled to irrigate from this water continuously and only the surplus to be used by us.

Cross-
examina-
tion.

XX'n by Mr. Houry :

Q. You said that you have title deeds for this water?—A. Yes. 30

Q. Where are they?—A. There are some here and others at the L.R.O.

Q. If you have them produce them?—A. Yes. (*By consent 12 title deeds belonging to several Plaintiffs put in in one bundle—marked Exhibit No. 8 (1-12). (Title deeds handed to Mr. Houry for inspection.)*)

Q. Several of these title deeds have as boundary "Water running through Karkotis river from Troodos"?—A. Yes.

Q. And some "running from Karli Dagh to Karkotis river on every 22 days"?—A. Yes.

Q. Any other title deeds running from Karkotis river from Troodos? 40
—A. Yes.

Q. Another title says "running through Karkot called Ouroum Salisi Nevbet"?—A. Yes.

Q. Can you help us understand what this means?—A. This term designates the division. The water belonging to the Greeks because there is another division belonging to the mousoulman.

Q. This title is the oldest of all the title deeds you produced, it is dated 1906?—A. I do not know this.

(Time was given to the witness to examine the title deed.)—A. Yes it is the oldest.

Q. It is title deed No. 5345 ?—A. Yes.

Q. Yet another title deed mentions the boundaries as "running through Karkotis river" ?—A. Yes.

10 Q. You yourself are not in a position to explain to Their Honours that this old kotchán all the boundaries contained in Kotchán No. 5345 was changed so as to speak of Troodos and of Springs of Troodos? You yourself are not in a position to explain it ?—A. It may be an oversight of the clerk. I myself do not know the reason.

Q. You are not in a position to explain it yourself ?—A. No.

Q. Did you ever go and divert the water at any spot above the village of Kakopetria? At any time during your lifetime ?—A. Yes I with my water guards went and diverted the water at Ayios Nicolas, Frantziko and Karydhi and all the dhymata.

Q. I am not concerned with the Dhymata of Kakopetria and downwards; I am asking whether you went and diverted the water from Kakopetria upwards ?—A. Yes we did.

20 Q. I assume that you must have told your learned Counsel that you did ?—A. I may not have informed my Counsel.

Q. So you did not inform your learned Counsel that you diverted the water ?—A. They did not ask me and I did not tell them.

Q. That is why you were not questioned about it. Have you got any note when you went and diverted the water ?—A. No I have not got the dates. I went many times there but I have not got them written down.

Q. In all how many times ?—A. I might have gone 5-6 times.

Q. In all 5-6 times ?—A. Yes.

Q. In all your lifetime ?—A. Yes. Till 1941.

30 Q. How old are you ?—A. 49 years old.

Q. These 5-6 times can you say which years you went and diverted the water ?—A. Between 30 and 40.

Q. Do you know whether any Kakopetria people on this occasion saw you diverting the water ?—A. We had a water guard Yiannis Papa Antoni and others.

Q. Any man from Kakopetria ?—A. Yes I think Yiannis Papa Antoni lives. He was paid by us as water guard.

Q. This man saw you ?—A. Yes he was our water guard.

Q. How many times ?—A. As many times as I have gone up there.

40 Q. Any Kakopetria people saw you ?—A. The water guards whom we paid.

Q. This man is the only one you can name ?—A. Yes.

Q. How many times did he see you diverting the water ?—A. I do not remember.

Q. And from which particular dam did he see you diverting the water ?—A. From Frantziko.

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Plaintiffs'
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No. 18.
Evidence of
Tofis Papa
Yeorghi,
21st June
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tion,
continued.

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No. 18.
Evidence of
Tofis Papa
Yeorgi,
21st June
1948,
Cross-
examina-
tion,
continued.

Q. What time was it?—A. It was summer in July and August. During the period we used to go and divert the water.

Q. What time was it that you diverted the water?—A. We are not diverting the water but we are going on the spot we are watching the dams so as not to allow other people to divert the water. In fact we are not diverting it ourselves.

Q. To understand you, you never diverted the water from any point above Kakopetria?—A. No. We never diverted the water at any point above Kakopetria. We find it diverted from other villages.

Q. And your attention was directed to see the water running into the stream?—A. Yes in order that they may not cut it and take it into their fields. 10

Q. Did it ever occur to you to quarrel with any Kakopetria claimant of the water. Any instance which the Kakopetria people wanted to take the water and take it into their fields and you insisted?—A. It did not happen during the period I was going.

Q. So your duty during these 5-6 times was merely confined to sight-seeing?—A. I was not going there for sight-seeing but in order to watch the water.

Q. Can you name to us any specific occasion on which Kakopetria people saw you watching at all the water above the village of Kakopetria?—A. I cannot remember now the dates. 20

Q. I am not asking you of dates I am asking you of names?—A. Haralambos Violaris saw me many times.

Q. In the cafe?—A. In his village.

Q. I do not want that. At the place of the water?—A. No because I was with the water guards. I did not see him at the spot.

Q. The water guard you saw was Yiannis Papa Antoniou?—A. Yes and the other one is dead now.

Q. Do you understand from astronomy?—A. No. 30

Q. Did you ever see this so-called Pleiads?—A. I see it quite often.

Q. Can you point out to us at any time during the night?—A. Yes. I can describe it.

Q. Did you ever see these Pleiads yourself?—A. Yes quite often.

Q. Where did you see it?—A. It rises from the east and sets.

Q. How do you distinguish it? Is it one star or more than one star?—A. 5-6 stars together.

Q. If I ask you to make a sketch of the Pleiad can you do it?—A. Yes.

Q. You can?—A. Yes I can. (Witness is given a piece of paper and 40 made a sketch on it.) Put in marked Exhibit No. 9 (A).

Q. Can you make a sketch of the Orion also?—A. Yes. (Sketch of the Orion made on the same piece of paper.) Put in marked Exhibit 9 (B).

Q. Is the Pleiad visible at this time of the year?—A. Yes it is visible.

Q. Did you observe this Pleiad from any of the dams at Kakopetria ?
—A. When the sun set we usually left that place and our water guards remained there.

Q. You did not see ?—A. No because I did not remain at night there.

Q. Neither the Orion ?—A. No.

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Re-examination :

During the winter the Pleiad is visible at the time when the sun sets. In summer after May the Pleiad is visible from the east. In winter the Pleiad is visible from the west. On the 28th August our signs (simadhia) change. On the 28th August the Pleiad rises at about 10.30 to 11 p.m. The Orion rises at about 2 a.m. I said that when I used to go up there I used to see Yiannis Papa Antoni whom we employed as water guard. This man is living. I do not know him quite well but I used to see him. This man used to be a mukhtar formerly.

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Evidence of
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tion,
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ation.

Mr. Houry : One question which arose from the very last question through Your Honour's Court.

Court : Leave granted.

Q. Karkotis river starts from Troodos ?—A. Yes.

Q. What is your authority to say that ?—A. I say this because from the springs of Troodos Karkotis river is formed.

Q. But you know that Karkotis river is formed eventually by several tributaries ?—A. Yes.

Q. Do you know the name of these tributaries above Kakopetria ?—
A. I do not know their names.

Mr. Clerides : This is the case for the Plaintiffs.

No. 19.

EVIDENCE of Alexandros Savva (Witness No. D.1).

ALEXANDROS SAVVA, sworn.

I am of Galata. I was born at Kakopetria. I am 55 years old.

Q. You know this river Karkotis ?—A. Yes.

Q. From what point does this river Karkotis start ?—A. When the two rivers Karvounas and Ayios Nicolas join.

Q. Is it a fact that the river Karkotis extends as far as Troodos ?—
A. No.

Court : What point they join ?—A. At a locality in the village where there are two bridges.

Q. In the middle of the village ?—A. Near the old Kakopetria village.

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Evidence.*

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Evidence of
Alexandros
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Q. It is in the village of Kakopetria?—A. It is at the edge of the village. From there upwards it is not called Karkotis.

*Defendants'
Evidence.*

Examination continued: Q. Do you have any land in Kakopetria?—
A. Yes.

Q. In Galata?—A. Yes.

Q. We have heard the dams mentioned above Kakopetria?—A. Yes.

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Evidence of
Alexandros
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tion,
continued.

Q. We have heard of the dam of Frantziko and Ayios Nicolas and on the other side Karvounas tributary, Karidhi and Apliki?—A. There are two dams at Karydhi.

Q. Do you remember anybody from the lower villages interfere with 10
these dams at all?—A. No.

Q. In other words, Kakopetria is free to irrigate from them without any restriction?—A. Yes.

Q. Is there any restriction not allowing Kakopetria to take such water whenever they like?—A. There is no restriction.

Q. What happens to the surplus?—A. Goes to the rivers.

Q. Which rivers?—A. The surplus flows into the river. Karydhi and Ayios Nicolas flow into the Karkotis river.

Q. There are two dams before the junction Vassiliko and Kapatokas?—A. Yes, but these are Galata dhymata. It is in the area of Kakopetria 20
and the Galata people have a right on them.

Q. My question is, although you mentioned previously that there was no interference in these two dams, can you say the same thing in respect of these two dams Vassiliko and Kapatokas?—A. Yes, people of the villages below were going there and cutting the water.

Q. There are springs which are issued from private lands?—A. Yes, many springs.

Q. These springs do they put into the stream much quantity of water?—A. Yes.

Q. As compared with the original quantity that runs along the stream, 30
what proportion these springs add to the quantity of water?—A. They add a big quantity.

Q. Half quantity. Do they double it?—A. It nears doubling it. It nears 100 per cent. Kakopetria people irrigate their land from the time I can remember.

Q. What is the area that is under irrigation to-day from these two springs?—A. About 300 donums or even more.

Q. What has been the tendency during the last 25-30 years? Can we say that the area irrigated was extended or restricted?—A. The tendency has been rather decreasing. The area has been decreasing 40
because many houses have been built.

Q. Do you hold any official position in the irrigation division of Kakopetria?—A. No appointment in the irrigation division.

Q. Do you know Pleiad?—A. Yes.

Q. By the end of May is it at all visible from Kakopetria?—A. No.

Q. It is never visible during the 24 hours of the day?—A. No.

Q. The quantity of the water is never uniform?—A. In good years the volume of the water is big.

Q. But let us take the year when rainfall is normal, then we can say that more or less the quantity is a normal quantity?—A. Yes.

Q. In the years when the quantity of water running is normal, how much of it Kakopetria lands absorb?—A. One-fifth or one-sixth of every dam. Kakopetria absorbs one-fifth or one-sixth and the four-fifths go into the Karkotis river in years of normal conditions.

XX'nd by Mr. Clerides :

- 10 I have been living in Galata since 1919. I have properties at Galata which are irrigated from Sina Oros and others from Makry. I have no properties irrigated from Vassiliko and Kapathokas. Vassiliko and Kapathokas are dams of Galata. Both these dams are from the river of Ayios Nicolas. I said that from the junction of the rivers at the two bridges upwards it is not called Karkotis river. I do not know if L.R.O. is wrong when calling it Karkotis river from the junction upwards. I do not remember. I heard that an action was instituted by Galata, Sina Oros people against Kakopetria people for this water. I do not know if Galata people and Kakopetria people in that action said that the Frantziko and
- 20 Ayios Nicolas were in the Karkotis river. It is not true that during the time Kakopetria people are entitled to irrigate from properties is the same time as Galata, Sina Oros are entitled. It is not the same hours that they are entitled to irrigate. Kakopetria people are entitled to irrigate any time they want. They were always irrigating at any time they liked. Galata people irrigate with their turn. Galata people are entitled to irrigate at the rising of the Pleiads and from the 28th August from the rising of the Orion. I was a member of the Irrigation Division of Galata for two periods and I know it. From June up to the 28th August Galata people are entitled to irrigate from the rising of the Pleiads and
- 30 from the 28th August from the rising of the Orion.

Q. You told us as to the time they start to irrigate but up to what time they are entitled to irrigate?—A. Up to sunrise. When the sun rises the following villages take the water: Evrykhon, Tembria, Korakou. I said that Galata people take the water from the rising of the Pleiads or Orion. Not on all days they are taking the water. On Tuesday Galata people are not entitled at all to irrigate.

Q. I put it to you that during the hours Galata people irrigate also the Kakopetria people are entitled to irrigate?—A. No, it is not so.

- 40 Apart from the other dams Galata people are entitled to get from the dams of Kapathokas and Vassiliko from the rising of the Pleiads or Orion as regards the dams further down. I do not know if there is any judgment of the Court directing that Galata should get the same hours of water as Kakopetria. I said that there were many springs in private lands. I did not measure the volume of the water. From these springs before the water drops into the river Kakopetria people are irrigating some of their fields if the water passes by these lands. There may be springs the water of which is not irrigated and flows into the river. I have not seen them all. I did not count the number of springs.

- 50 But I know there are a lot. I said that the water which flows from these springs it increases the volume of the water by 100 per cent. I did

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tion,
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tion.

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not count the surplus of each spring flowing into the river but I said by a general estimate. I have properties at Kakopetria, which used to be gardens. There were trees there but also planted other trees such as apple trees and apricot trees.

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Evidence.*

No. 19.

*Evidence of
Alexandros
Savva, 21st
June 1948,
Cross-
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tion,
continued.*

It is true that during the last 20 years many trees have been planted in Kakopetria. There were many trees before as well. It is not true that the trees of Kakopetria were increased by 100 times. The old trees were uprooted and replaced by new ones. It is not true that we uprooted trees which did not require water and that apple trees and apricot trees were planted. Twenty years ago I had 5-6 apple trees. Now I have got about 50 apple trees. There may be people who had less than I and now more. On the 28th August the Pleiad rises between 10-11. Orion rises at 1½ before daybreak. It is not true that Orion rises on the 28th August at 2 o'clock. I irrigate from the Galata water. On the 28th August we have to take the water at the rising of the Orion and as we have to irrigate at that time we know when the Orion rises. It is 1½ hours before daybreak. There is a great difference between daybreak and sunrise. I did not see in the month of August the time when the day breaks. From daybreak till sunrise about half an hour or quarter of an hour may elapse. It may be more. In summer the sun rises at 5 o'clock, three-quarters of an hour to one hour before day breaks. That is 4 to 4.15. And one and half hours before daybreak we have half past two or quarter to three. What I said is provided that the sun rises at 5 o'clock. When the sun rises the people of the villages below were cutting and taking the water from all the dams of Galata including Vassiliko and Kapathokas. I used to see Petra people at these dams. I have been a member of the committee. From 1919 up to 1923 I used to go to Frantziko when I was a rural constable. From 1923 to 1938 I did not go to Frantziko dam. From 1938 always I used to go. I have kept a piece of land which is irrigated by Frantziko dam. I have about one and half donums or 5 evleks. I have no property irrigated by Karydhi dam. This dam of Ayios Nicolas is for irrigating the property of the monastery. I had a piece of land irrigated by Apliki dam which I gave 4 years ago to my child who has got married. From the 4 dams above the junction of the two rivers I was irrigating only from Frantziko and Apliki dams. From 1923 to 1938 I did not go to irrigate. My wife did so. It is not true that the dams I irrigated from Frantziko and Apliki dams is during the night time.

Q. I put it to you that if you irrigated during the day time it was unlawfully?—A. Whenever my properties required water in day time I irrigated.

40

*Re-examina-
tion.*

Re-examination :

You were asked by my learned friend that many of the Kakopetria lands have been converted into gardens? Or they have been more densely planted with trees?—A. Yes.

Q. The quantity of water absorbed to-day is more than used to be absorbed?—A. It is even less.

Q. Why?—A. Because the shade is increased and the growth of evaporation is slower.

Q. Is that due to the growing of more trees?—A. Yes.

Q. And instead of watering them for instance every 10 days they are 50 watering every 15 days.

EVIDENCE of Nicolas Ioannou (Witness No. D.2).

In the
District
Court of
Nicosia.

NICOLAS IOANNOU, sworn.

Q. From where do you come?—A. From Kakopetria.

Q. How old are you?—A. Forty-eight years old.

Q. You lived there all your lifetime?—A. Yes.

Q. Do you know this so-called Karkotis?—A. Yes.

Q. Now from what point does that river Karkotis start?—A. From the two bridges where the two rivers join.

10 Q. What two rivers join?—A. Ayios Nicolas and Karydhiou, i.e., Karvounas. Karkotis is called from the point where the two rivulets join downwards after the two bridges.

Q. We know after the river of Ayios Nicolas there are some dams?—A. Yes.

Q. There is Ayios Nicolas dam and Frantziko dam?—A. Yes.

Q. And along the other side on the Karvounas river there are two other dams called Apliki and Karydhi?—A. Yes.

20 Q. Do you know or do you not know whether Kakopetria people have been using this water or these dams. Have they been using it under some restriction or without restriction to your knowledge?—A. Without restriction. Whenever they wanted.

Q. The only restriction is the necessity of land?—A. Yes.

Court: One could irrigate one-sixth of the water for the purpose of irrigating his land. He could irrigate for as much time as his field needed, the whole piece of the field. I was taking water as much as my land required.

X'n continued: There was never at Kakopetria any system for distributing the water by hours.

30 Q. You know that alongside the two rivers Ayios Nicolas and Karvounas there issue from private lands springs?—A. Yes.

Q. And the water of these springs ultimately finds its way into the stream?—A. Yes.

Q. You know these springs yourself?—A. Yes.

Q. These springs are to be found before the two rivers meet at Kakopetria do they add substantially to the water of the stream?—A. Yes.

40 Q. What proportion in your estimate? Do they increase the volume of the water?—A. One-fifth or one-sixth of the river. The water which emanates from the springs is increasing the volume of the river by one-fifth to one-sixth. (*Question repeated in Greek the answer given being the same.*)

Kakopetria people take the water from these dams.

Q. What is the proportion of Kakopetria people take according to your estimate?—A. About one-sixth of the river.

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Evidence.

No. 20.
Evidence of
Nicolas
Ioannou,
21st June
1948,
Examina-
tion.

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Defendants'
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No. 20.
Evidence of
Nicolas
Ioannou,
21st June
1948,
Examina-
tion,
continued.

Q. According to your view they employ so much water as is derived from the springs?—A. Yes, nearly so.

Q. Tell Their Honours the quantity of the water in stream is varying from year to year or is the same?—A. Yes, it depends on the rainfall.

Q. The quantity you mentioned to Their Honours do they rest on years of normal rainfall or on years of abnormal rainfall or on years of drought?—A. This analogy depends on the rainfall of the year no matter whether it is drought. The area irrigated by Kakopetria people is about 300 donums.

Q. The area irrigated during the last 25 years is on the increase or 10
on the decline?—A. The same area. There were some properties which were irrigated before now have been converted to building sites. 300 donums were irrigated before now about 20 donums have been converted into building sites that is about 280 left. There are two other dams, Kapathokas and Vassilikos. These dams belong to Galata people. I have properties which are irrigated by the dams of Kakopetria. I have properties irrigated by other dams at Kakopetria, Frantziko and Apliki.

Q. Did it occur to you to see any people coming to interfere with your rights of irrigation or diverting the water?—A. No.

Cross-
examina-
tion.

XX'n by Mr. Clerides :

20

I said that about 20 donums of irrigable land has been converted to building sites. It is not true that many fields above the village which were not originally gardens are now converted into gardens. Above the village were all irrigable properties and have been turned into gardens. Fields were reclaimed (exortziasma). No gardens were formed in the bed of the river or banks of the river of Ayios Nicolas because the river itself washed them away. I was a rural constable but not a water guard. I have never been a water guard. I have been irrigating my land from Frantziko and Apliki for the last 30 years and more. Our water guards tell us about our turn for irrigating our properties. There were many 30
water guards. Many times I irrigated at night and day. When I did not manage to finish by day time I irrigated at night time. I always irrigated even on Tuesdays. We are entitled to have the water of Frantziko during all the hours of the day and night. Nights would not suffice us. I went many times to the Koftousa of Frantziko. I never saw water guards of the down villages up there. I did not even see Yiannis Papa Antoni, former mukhtar of our village, to watch up there. I did not know if Yiannis Papa Antoni was a water guard of the down villages. We are entitled to put in the Frantziko dam as much water as it can carry. We put one-fifth or one-sixth of the water of the river in our 40
channel.

There is nothing which makes us to take one-fifth or one-sixth of the water. We found it like this. It is not true that Kakopetria is entitled to get water in the same hours as Galata and Sina Oros. It is not true that the right of Kakopetria people for these dams is from the rising of the Pleiads up to sunrise and from the rising of the Orion up to sunrise as from the 28th August. It is not true that Kakopetria has no right to take water on Tuesday I have never heard such a thing. Papa Symeo Hadji Nicola was alive during my lifetime. He died about 20 years ago.

I remember Sofronios Louka of Galata. I do not know if Galata and Sina Oros instituted an action against our village for the water. I do not know if the people of that time knew the rights of water of each village better than I do. I know Karkotis river is called from the junction of the two rivers downwards. That is how I found things and that is how I have been hearing about it. It is not true that I say like this because it is out of interest and not in the way I heard it. In my village there is a certified map of our village. I do not know if the certified map calls the river from the junction upwards as Karkotis river. It may be a mistake of the

10 L.R.O. clerk if it is like this. Troodos is upwards not at the junction of the two rivers. The junction is not known by the name of Troodos. According to the title deeds they are entitled to take water from Karkotis but Karkotis does not come from Troodos; the water may come from Troodos but Karkotis is not from Troodos. I do not know if I am Defendant. I am a member of the Irrigation Committee but I do not know if I am a Defendant. I was in the Army during this period.

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*No. 20.
Evidence of
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tion,
continued.*

Re-examination :

I am a member of the Irrigation Division.

Q. Were you a rural constable yourself?—A. Yes.

20 Q. For what village and for how many years?—A. From 1923 to 1940 for Kakopetria village.

Q. Is it part of your duties to acquaint yourself with the water rights?

Mr. Clerides : I object. The question should be "What were the duties of the rural constable."

Mr. Houry puts the question in Greek. The rural constable knows the owners of fields and water.

*Re-examin-
ation.*

No. 21.

EVIDENCE of Yiannis Vassiliou (Witness No. D.3).

YIANNIS VASSILIOU, sworn.

30 Q. You come from where?—A. Kakopetria.

Q. You are the mukhtar?—A. Yes.

Q. How old are you?—A. Forty-eight.

Q. Where did you live all your lifetime?—A. Kakopetria.

Q. You know this river Karkotis?—A. Yes.

Q. From where does it start?—A. From the junction of the two bridges downwards. Karkotis starts from the point where the two rivers join.

Q. What rivers join? What are the names of these rivers that join?
—A. The river of Ayios Nicolas and Karvounas.

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Evidence of
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Vassiliou,
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tion.*

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*No. 21.
Evidence of
Yiannis
Vassiliou,
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1948,
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tion,
continued.*

Q. So these are the two rivers. Are they or not known by the name of Karkotis?—A. This river upwards is not called Karkotis river. It is Karkotis from the two bridges downwards.

Q. We know that in Ayios Nicolas river there are two dams?—A. Yes.

Q. Before reaching Kakopetria Ayios Nicolas dam and Frantziko?—
A. Yes.

Q. And along the other side is the Karvounas river the other dams Apliki and Karydhi?—A. Yes.

Q. Now who used the water of these dams?—A. Kakopetria people.

Q. Do you remember the origin of that usage?—A. From the time 10
I remember.

Q. It was already in use?—A. Yes.

Q. Do you know of any restriction in taking such water as is necessary?—A. From this dam? No. There are no restrictions. We irrigate whenever we like.

Q. Has there ever been at Kakopetria any system for the distribution of the water by hour?—A. No.

Q. Or with the appearance of any stars in the sky?—A. No, whenever we liked.

Q. On what hours of the day?—A. During the 24 hours. Whenever 20
we liked. Every day.

Q. Surely following the rules of your Irrigation Committee?—A. Yes.

Q. Since when these rules have been promulgated?—A. Since 1937.

Q. Now there are two other dams before the confluence of the two rivers named Vassiliko and Kapatthokas?—A. Yes. They are Galata dams and they are in the area of Kakopetria.

Q. But Kakopetria exercises no restriction over the rights of these two dams?—A. No.

Q. Do you happen to irrigate any land at all on any of the dams which you have mentioned. Ayios Nicolas, Frantziko, Apliki and Karydhi? 30
—A. I irrigated from the dams of Karydhi and Frantziko as I have got properties.

Q. For how long?—A. From the time I inherited it from my mother and father.

Q. What year was that?—A. From 1922.

Q. Before 1922 did you see your father and mother doing anything?—
A. Yes, we used to go together and my parents were irrigating them.

Q. From your boyhood you were irrigating from these dams?—A. Yes.

Q. Did you ever irrigate during the months of June, July and August and September?—A. Yes. 40

Q. Do you remember anybody interfering with your rights of irrigation?—A. Not until 1941.

Q. You know there is a number of springs alongside these two rivulets Ayios Nicolas and Karvounas?—A. Yes.

Q. In number how many are they?—A. About 32.

Q. These springs, I suppose 32 of them flow eventually into the bed of the stream?—A. We are taking the water of some of them and irrigate our fields and the water of the other flows into the rivulets.

Q. So the water finds its way into the bed of the river before reaching Vassiliko and Kaphthokas?—A. Yes.

Q. Do they add anything to the quantity of the water in the stream?—A. Yes, when the springs' water flows into the river the volume of the water in the river increases.

Q. In what proportion?—A. One-sixth of the water of the river is increased by the flowing of water from the springs.

Q. Taking the total volume of water employed by Kakopetria village what volume of the water is exhausted in the irrigation of Kakopetria land?—A. About one-fifth of the river of the whole volume.

Q. So it is increased by one-sixth and decreases by one-fifth?—A. Yes.

Q. So Kakopetria according to your view employs slightly more water than what is put into the river by the spring water?—A. Yes.

Q. Can you tell what area of land was irrigated from old times of the channels which you have mentioned except of course Vassiliko and Kaphthokas?—A. Over 300 donums.

Q. What quantity is irrigated to-day?—A. It is less to-day as we have built many houses and also roads were constructed.

Q. Formerly the irrigation was effected on what kind of land?—A. Formerly we had few trees mulberry trees, apricot trees and we used to sow it with beans and summer crops.

Q. That necessitated much water?—A. Yes more than what we get now.

Q. Why?—A. Because the trees want less water whereas summer crops want much water.

Q. Did it occur in your lifetime to see any of your villagers watch the star in order to start irrigating?—A. No.

Q. Now did it ever occur in your lifetime to see any people coming from other villages to divert the water from Frantziko, Apliki and Karydhi?—A. No never happened.

*Court: Adjourned to 3 p.m. for continuation.
3.15 p.m. Resumed.*

Appearance as before.

XX'nd by Mr. Clerides:

As I am the mukhtar of the village I have in my custody the valuation book but not maps. At the junction of the river Ayios Nicolas and Karvounas it is from here downwards that we call the river Karkotis and the water of the rivers which form Karkotis comes from Troodos. I never heard that above this junction of the two rivers we call it Karkotis. If one has the right to irrigate from Karkotis he has the right to irrigate only from the water flowing below the bridges. I consider the water of the dams Kaphthokas and Vassiliko as not being the water of Karkotis.

*In the
District
Court of
Nicosia.*

*Defendants'
Evidence.*

No. 21.
Evidence of
Yiannis
Vassiliou,
21st June
1948,
Examina-
tion,
continued.

*Cross-
examina-
tion.*

*In the
District
Court of
Nicosia.*

*Defendants'
Evidence.*

No. 21.
Evidence of
Yiannis
Vassiliou,
21st June
1948,
Cross-
examina-
tion,
continued.

I do not remember if our village had any dispute with Galata. I have not heard whether Galata and Sina Oros instituted an action against our village for the water. I do not know if the people before us who brought the action called the water of Frantziko, Vassiliko and Kapathokas as being the water of Karkotis. I do not remember how many years Papa Symeo died—about 10 years ago. I have never been a water guard. I know Yiannis Papa Antoni the former mukhtar. He has never been a water guard of our village. I do not know if he has been a water guard of the downward villages. I discussed the question about this water with him for many times. During my lifetime I have never known if Yiannis Papa Antoni has been a water guard. It is the first time now in Court that I heard that Yiannis Papa Antoni was a water guard. Neither did I see him guarding water at Frantziko, Karydhi or Ayios Nicolas. My property from the Frantziko dam is half an English mile. My property from Frantziko Koftousa is about one-quarter of an English mile. In order to go to my garden I do not have to pass by Koftousa. When I go to my garden in order to irrigate I do not go to the Koftousa myself, the water guard conducts the water there. Quite often I used to go to my vineyards and pass by Koftousa every other day. I did not see any water guards guarding the water at Koftousa. I said that only one-sixth of the river water we conduct in our own channels. We have not measured the quantity of water we take from Frantziko dam. We take the water as much as we require. We have the right to put earth in the dam of Frantziko. The water is so abundant that is why it is not necessary to cut it with stones or earth. The Frantziko dam is in the river and we divert it making use of stones and bushes. By putting these stones and bushes we take only one-sixth of the river water. In bad years the water is decreasing. When I say one-sixth we take one-sixth from all the sluices. If the water is four kortas then we take one-fourth, 3 kortas we take one-third. 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. I have no fixed date on which I irrigate my garden. Neither do I want to have fixed date to irrigate since it is by turn. Whenever I want to irrigate I am entitled to take the water and irrigate. I have never irrigated at night time. Since we are entitled and we are irrigating at daytime why should I like to irrigate it at night time. It may be that no one of my co-villagers can go and irrigate at night since they can during the daytime. I am a member of the Irrigation Committee. All my co-villagers have a right to irrigate. The Irrigation Committee does not fix them the hour they just go and irrigate.

Court: Not even by turn?—A. It is by turn for the sake of order. The turn is fixed by the Committee.

(*To J. Pierides*): We have no lists to define the turn. We are not preparing lists, because we may want to irrigate every 15 days or 17 days or 12 days.

XX'n continued: We leave it to everyone to go and irrigate whenever he likes. Since we can irrigate at daytime we do not irrigate at night. When we are irrigating at daytime the villagers of the down villages are not affected because the water is abundant. If we irrigate our fields from

the rising of the Pleiads to sunrise then the down villages will have more water to irrigate during the daytime. It is more easy for us to irrigate during the day instead of night time. It is easier for us to irrigate whenever we like because this has been our right *ab antiquo*. I know that many villages irrigate from the water of this river. I do not know if our village has got its own hours for irrigation. I know that my co-villagers have properties irrigated by Kapatokas and Vassiliko water. I have no properties irrigated from Kapatokas and Vassiliko. I do not know if those who have properties and irrigate them from water of Kapatokas and Vassiliko have the same right as those of Kakopetria. I have never seen water guards at Kapatokas and Vassiliko. Kapatokas and Vassiliko are in the village land of my village. Vassiliko is near the bridge where the two rivers join near the asphalt road. I have never seen the water guards there. The water flows in Vassiliko during the daytime. There is water in the Vassiliko dam I do not know if they irrigate from Vassiliko. Near the bridge where the dam is there is no Koftousa it is 2 donums up but it is visible from the road. I did not notice that the water during the daytime flows from the Koftousa of Vassiliko into the river. Kakopetria people are entitled to irrigate every day. Kakopetria village is high up and has the right to irrigate whenever it likes.

Q. I put it to you that whenever you were irrigating during the daytime you were stealing it?—A. No.

We have never seen water guards from other villages below.

*In the
District
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Nicosia.*

*Defendants'
Evidence.*

*No. 21.
Evidence of
Yiannis
Vassiliou,
21st June
1948,
Cross-
examina-
tion,
continued.*

No. 22.

EVIDENCE of Georghios I. Papa (Witness No. D.4).

GEORGHIOS I. PAPA, sworn.

I am 50 years old.

Q. Where have you lived your life?—A. In Kakopetria.

I know the river Karkotis.

30 Q. From where does it start?—A. It starts from where the two rivers meet and goes downwards to Evrykhon. It runs northwards towards Evrykhon.

Q. These two rivers are joined at Galata from Karkotis river—what are their names?—A. One is Ayios Nicolas and the other is Karvounas or Garilli.

Q. And these rivers lose their names from what point?—A. From the point where the two rivers join after the two bridges.

Q. Have you ever heard it suggested that Karkotis extends further up?—A. No.

40 Q. Do you have any lands at Kakopetria that are irrigated?—A. Yes.

Q. From what time is the water coming to your land?—A. From Frantziko dam and from Karydhi.

*No. 22.
Evidence of
Georghios
I. Papa,
21st June
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tion.*

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Evidence of
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1948,
Examina-
tion,
continued.

Q. You have been irrigating this land for how many years?—
A. Forty years earlier.

Q. That is your earliest impression in boyhood you remember that this land was irrigated?—A. Yes.

Q. Were you ever restricted in bringing any quantity of water you require by anybody?—A. No, no restriction at all.

Q. In other words you could put as much water as you wanted?—
A. Yes, and irrigate whenever we like.

Q. It is safe to say that supply of water along the Frantziko dam is constant?—A. Yes. 10

Q. Do you remember seeing any water guards anywhere on this land of Frantziko, Ayios Nicolas, Apliki or Karydhi dams?—A. No.

Q. Never in your life?—A. No, never in my lifetime.

Q. Did you see any of your villages watching the stars in order to take the water into the Frantziko dam?—A. No.

Q. Did you ever irrigate your land at night?—A. Sometimes when we were absent from the village we have to irrigate at night time.

Q. What was the more general practice for you to irrigate at daytime or night time?—A. Whenever we like. The more general practice is at night time. Whenever we like. 20

Q. Tell me is there any system you know throughout your lifetime that regulated the water by hours?—A. No.

Q. I want to ask you a question I did not ask the other witness. If we suppose that Kakopetria take the water at night as suggested by the Plaintiffs during the limited hours would it have been necessary to regulate the water by hours?—A. No, it would not be necessary.

Q. I know the springs in the private field along these two tributaries. They are about 30 to 32 springs, main springs. These springs add to the quantity of water reaching Vassiliko and Kapathokas. Kakopetria people use about one-sixth of the water of all the dams. How many donums of land Kakopetria had in olden times under irrigation?—A. About 300 to 350 donums. 30

Q. Has that quantity been increased or decreased during recent years?—A. It was decreased.

Q. To what do you attribute that decrease?—A. Because they built houses.

Q. So irrigable land was converted into houses?—A. Yes.

Q. Now tell me you know the dam Vassiliko and Kapathokas?—
A. Yes.

Q. Do they belong to your village Kakopetria?—A. No. 40

Q. Did you ever see water guards guarding the dams of Vassiliko and Kapathokas?—A. No, I have never seen.

Q. Did you see any water guards guarding any of the dams further up Frantziko, Apliki or Karydhi?—A. No, I have never seen.

Q. When for the first time did other villages object to your using the water?—A. I never saw them bring any objection only they brought an action.

I was a member of the Irrigation Committee in 1937 and nobody made a complaint.

XX'nd by Mr. Indianos :

I have never been a water guard. I had the opportunity to go and visit Frantziko and other dams because I was going there to irrigate. I have a garden irrigated by Frantziko water.

My gardens are 15 to 20 donums away from Frantziko dam.

My gardens are about 2 donums in extent. All my property is 2 donums in extent. I irrigate this garden whenever I like. I irrigate this garden every 20-25 days every month. Every day I pass Frantziko dam as I have properties there. We water the trees in our gardens once in every 20 to 25 days. Whenever I am going to irrigate this garden I go once in every 20 to 25 days. I irrigate one garden for four hours in a day. This garden absorbs more water than the others. The other two pieces of my garden take one to two hours each.

Court : Every 20 to 25 days?—A. Every 5, 6 or 8 days.

XX'n continued : I am not irrigating these two gardens on the same day. It is on other days that I am irrigating. We have no regular water guards in our village. For many years we have not had water guards. Sometimes we have and sometimes we have no water guards during the last 10 to 15 years. I cannot remember when we had water guards during the last 20 years. For the greatest number of years during the last 20 to 25 years we used to have water guards. The duties of the water guards is to keep order, but many times the water guards diverted the water and sometimes we conducted the water ourselves. I used to go to Frantziko every day. I used to pass by the Frantziko every day. Near the Frantziko dam I have got a vineyard and I go and stay for a week there. In summer in July, August and September I used to stay in my vineyard during the whole month. During the daytime I am watching my vineyard so that my crops may not be stolen. When I absent myself from the vineyard my wife and/or the child stay there. At night I sleep at the vineyard. Every month when I go every 20-25 days to irrigate one of my gardens and every 8 days when I irrigate the remaining two gardens and during the months I am staying in my vineyard there may be occasions when on many hours when I am not there. I have not got any special reason for which I remain there to guard Frantziko dam. When I am not present there during the summer hours I do not see if the water guards go there at Frantziko. I know Yiannis Papa Antoni, the former mukhtar of Kakopetria. Kakopetria has a population of 900 to 1,000. I do not know if Yiannis Papa Antoni has ever been a water guard. Yiannis Papa Antoni has properties irrigated by the water of Frantziko which he gave to his children. About 40 years or 50 years ago. He was one of the good land owners of the village. The Irrigation Committee of our village was formed in 1937. I remember that from 1908 we could irrigate our lands whenever we liked and on any day. I do not remember, there might be water guards in 1908, I do not remember. Before 1937 there might be water guards. I know a certain Haralambos Makry. He was a water guard before 1937. I do not remember the year when he was water guard.

*In the
District
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Nicosia.*

*Defendants'
Evidence.*

No. 22.
Evidence of
Georghios
I. Papa,
21st June
1948,
continued.
Cross-
examina-
tion.

*In the
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Court of
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*Defendants'
Evidence.*

*No. 22.
Evidence of
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I. Papa,
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Cross-
examina-
tion,
continued.*

The properties of Kakopetria are about 300 donums. In 1937 I was a member of the irrigation committee and we taxed 250 donums and there were donums which we did not tax. These donums which we did not tax had a right to be irrigated. Those which were not taxed were about 50 to 80 donums. We did not tax these donums because so we wished it. Twenty-five to 30 donums were reduced from the irrigated lands for building houses. The houses were built from 1922 to now. Not even an inch of new garden was made as from 1922. The fields which were not cultivated and were by the gardens were also irrigated. The field of the father of the present bishop of Kyrenia had a vineyard which he turned into a garden. Originally before it was turned to vineyard it was a garden. It was originally used as a garden. It was converted into garden about eight to ten years ago. I know the property belonging to Varvara Christofi. This property is not irrigated by Frantziko but from Arghaki. The production of apples in our villege is a wealth-producing source. The extent of the fields with apple orchards were reduced by 20 to 25 donums. The production of apples was affected. In spite of the fact that production of apples is a wealth-producing source we have not made an inch of new gardens of apple trees. The river which starts from the bridge upwards it is called Ayios Nicolas river, but not the whole of it. The river up to the monastery and further up up to the Chrome mine is called Ayios Nicolas. From there upwards it is called Kokinorotsos. The water of Kokinorotsos flows to another river which is called river of Kannoures. The river Karkotis is from Kakopetria downwards. I have never heard whether Galata and Kakopetria had any dispute in the water. I do not know if Galata has the right to irrigate at the time we are irrigating. I do not know when Galata and Sina Oros has the right to irrigate. I have never gone to Kapathokas dam. Koftousa and Vassiliko are visible from Troodos. I have never seen water guards at this dam. I passed by that place regularly, sometimes every day. This happens all the year round. When I go to Galata, Nicosia and some other places I do not stay at my vineyard at Frantziko. It happened to me to pass by that place early in the morning. At sunrise I saw many times the water flowing from Vassiliko into the river. I do not know any occasion when the water emanating from the springs in private lands to be measured. This water is not every year the same. It is sometimes less and sometimes more. We used this water whenever and at any time we like. We do not take the whole volume of the water into the river. We take as much as we need. In some years the volume of the water is little. In 1941 the volume of the water was little. It was not true that it was just sufficient for our fields. There was enough surplus that was flowing down. We did not use the whole water in that year. It never happened to us to take the whole quantity of water from the river in order to satisfy our needs. In 1941 we used only one-fourth of the flowing water. The water is always abundant. I was not present when the priest of Petra came together with Alexandros.

*Re-examina-
tion.*

Re-examination :

I said that Karkotis starts from our village downwards. There are two tributaries one called Karvounas and the other Ayios Nicolas. The surplus of Frantziko dam which is not required by the village flows into the Karkotis river. The surplus water of Frantziko channel flows

sometimes directly into the Karkotis and sometimes through the old village into the Karvounas river.

Court : What portion of the water you take in order to irrigate your garden ?—*A.* I take only one-third of the water of Frantziko or half of it. I do not take the whole.

Q. Then another proprietor may take the other half, is that possible at the same time ?—*A.* Yes.

Q. Since there is no time fixed and no turn fixed and the people from Frantziko as well as from Karvounas may take the whole water to
10 irrigate ?—*A.* Yes.

Q. In that case there might be time that there will be no surplus to come down to the two bridges ?—*A.* No.

Court : Since there is no time fixed and no turn. Suppose that ten Kakopetria people start at the same time to irrigate their lands or their gardens ?—*A.* No, they cannot.

Q. What is the maximum number of proprietors who might irrigate their land at the same time, according to your view ?—*A.* Five to six proprietors may irrigate at the same time.

Q. If you tell me that you for your own use you take about one-third
20 or one-half of Frantziko water, then two or three proprietors might take the whole water, isn't that so ?—*A.* The water of Frantziko may be taken by two or three persons. We go and take only one-sixth.

Q. You mean to say not each gardener but all gardeners may take from the same channel only one-sixth ?—*A.* Yes.

Q. Same thing applies to the Karvounas ?—*A.* Yes.

Q. One-sixth again ?—*A.* Yes.

Q. How is it ? Is there any understanding between you as to who will take it and so on ?—*A.* We have a water guard.

Q. But you are at liberty to take the water any time you like not
30 by turn and take the water by day or night. How can you arrange this ? How your system works ?—*A.* It is by turn.

Q. So there is a turn ?—*A.* We the Kakopetria people have our own rules.

Q. You have your own rules as far as Kakopetria village is concerned ?—*A.* Yes.

Q. And you fix the turn ?—*A.* Yes.

Q. So it is not upon any individual to have the water at any time of the day ?—*A.* When the summer crop of a person gets dry then he is given priority.

Q. So the water guard has the discretionary power to distribute the
40 water according to his opinion ?—*A.* Yes.

Q. And not the Irrigation Committee ?—*A.* The Irrigation Committee appoints the water guards.

Q. Do I understand that the power for distribution of the water is delegated to the water guards ?—*A.* Yes.

Q. No lists prepared or posted by the committee ?—*A.* It has got a counterfoil and the committee gives to each one. It gives me a receipt fixing my date.

*In the
District
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*Defendants'
Evidence.*

No. 22.

Evidence of
Georghios
I. Papa,
21st June
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ation,
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ation,
continued.

Q. So you have got time and turn fixed by the committee?—A. Yes.

Q. You have?—A. Yes.

Q. And they prepare lists and so on?—A. No, they do not prepare lists.

Q. And therefore you cannot go beyond the hour and turn which your paper denotes?—A. We can go and irrigate beyond the hour fixed.

Q. Why?—A. When the summer crop plantations want water we can go and irrigate beyond the fixed hours secretly.

Court : Adjourned for the 22nd June, 1948, at 9 a.m.

(Sgd.) M. ZEKIA,

10

President, District Court.

No. 23.
Evidence of
Hambis
Makris,
22nd June
1948.
Examina-
tion.

No. 23.

EVIDENCE of Hambis Makris (Witness No. D.5).

22nd June, 1948. 9.15 a.m.

Resumed.

Appearances as before.

HAMBIS MAKRIS, sworn.

I have been living all the time in Kakopetria. I am 70–72 years old. I have been an aza for 3–4 years. I have been a water guard of Kakopetria village. I have properties in Kakopetria. I know Karkotis river. The 20 river Garillis joins with river of Ayios Nicolas and form the point of junction that is where the two bridges are the river Karkotis is formed. Both rivers join about a donum further down the two bridges. Both rivers join at the mill of Hadji Stavris.

The gardens of Kakopetria are irrigated from the water of Frantziko. This water of Frantziko comes from Kannoures and flows into the Frantziko dam. The gardens of Kakopetria are also irrigated by the water of Garyllis. Garyllis has got three dams, (1) Avlaki tou Pefkou, (2) Skopelies and (3) Apliki. I know Karydhi dam. Garillis river comes from Adelphi forest. I said I have got property which I irrigate from 30 the water of Skopelies. I inherited this property from my parents. Before I inherited this property my parents irrigated this garden from the same dams. I have got properties about 2–3 donums away from Frantziko channel and also I have got near the channel. I was irrigating my properties freely whenever my properties required water. I had no restriction whatsoever. I was watering my fields whenever I liked. I was watering day and night. We were diverting only one-sixth of the water of Frantziko into our channel for irrigation purposes. We were not taking more than one-sixth because the properties did not require more water. We used to do the same as regards the other dams. About 300 donums 40

of Kakopetria village land were irrigated by water of these dams. The same number of donums was irrigated from olden times. Before these fields were used for sowing beans, etc., now they have been planted with trees and now they want less water. They want less water because the trees make shade and the soil absorbs less water. Where there is shade no beans can succeed. When the trees were young they used to plant beans but not now that the trees are big. Plantations of beans can be found at places where there is no shade. Lately Kakopetria built quite a lot of new houses at the locality of Apliki which we bought from the Archbishop about 40 donums which are not irrigable lands. We built the houses in the fields which were irrigable. From the springs in private property apart from the river water. There are over 43 (forty-three) springs. I went with the mukhtar of Evrykhon and showed these 42 springs to him. At first we found 32 springs and then I asked the mukhtar of Evrykhon and Petros and they told me that they found over 40 (forty). After the trial of this action I went with them and counted the springs. These springs are found in private properties. The water of these springs flows down to the river of Ayios Nicolas and Garyllis. We take only one-sixth of the water of the dams to irrigate our fields. I have been a water guard in 1931 and 1932. I was appointed by the mukhtar of the village. I was appointed by the mukhtar of Kakopetria in order to keep order. In order to prevent the people from diverting arbitrarily the water, When all people irrigate their lands then the water guard diverts the water from Koftousa and goes into the river. We use the one-sixth of the Frantziko dam and conduct it to our channel, the remaining goes into the river. There is always water in our river. Sometimes it increases and sometimes it decreases. We, the Kakopetria people, can irrigate whenever we like day or night. We are not watching signs in the sky in order to irrigate. From my earliest memories, for the last 62 years, I have never seen water guards of other villages interfere with our dams. In my whole life I do not remember if any water guards of other villages came to our village. I know that Kapathokas and Vassiliko dams. They are in the lands of Galata and Kakopetria. Vassiliko dam is below and Kapathokas is up. Galata people irrigate from Vassiliko and Kapathokas. We never interfered with the water of these dams.

XX'nd by Mr. Clerides :

From Karkotis river, from the two bridges and below, about 10 villages irrigate. Galata people also irrigate their lands from the water of Vassiliko and Kapathokas, the one of which is below the bridges and the other above the bridges. I do not know if all these villages are irrigated from this water for their own requirements. We do not know if these villages have got their own hours during which they are entitled to irrigate. We are free to irrigate. I do not know if in the same hours we irrigate Galata and Sina Oros are entitled to irrigate. We, the Kakopetria people, allege that we have the right to irrigate during all the days of the week whenever we like day or night and as much as our properties require. In dry years the water gets less. Usually the water in the river is quite enough and we irrigate as much as our property requires. In dry years we irrigate our lands as much as they require. We are entitled to take as much water as our property requires. In 1901 I was about 25 years old. In

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*No. 23.
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tion,
continued.*

*Cross-
examina-
tion.*

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Evidence of
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examina-
tion,
continued.*

1901 I had properties which I irrigated myself. We heard that Sina Oros and Galata instituted an action against us. We heard of it from our parents. I remember Hji Papa Symeo Nicola. He was one of the defendants, sued as representative of the village. We do not know that the claim of Sina Oros and Galata against Kakopetria was that Kakopetria interfered with the rights of the inhabitants of Galata and Sina Oros or whether we cut the water at Frantziko or that we were using more than what they were entitled to. People of that period were mistaken when saying that the Frantziko dam was in the Karkotis river. I do not know if the L.R.O. is mistaken when calling the river starting from above Ayios 10
Nicolas and downwards Karkotis river. I remember that Galata and Sina Oros instituted an action. I was not in the matters. It was about water that they instituted the action. I do not know what the claim of the action was because I was not mixed. I do not know whether the claim was that we were taking more water from Frantziko. We used only one-sixth of the river water of Frantziko dam. When the volume of the river is great then we put one-sixth. When it is less then we put less than one-sixth. One-fifth or one-sixth. When we use one-fifth we put less water.

Q. I put it to you that you used one-half of the river water at 20
Frantziko dam?—*A.* We do not weigh the water or what the capacity of our channel is. Frantziko channel cannot carry water for two mills. We do not put in Frantziko dam water for one mill. I know Yiannis Papa Antoni of our village. I do not know if he has acted as water guard. He is older than I. He is 25 years older than I. I never remember him as being a water guard. I never saw him there watching as water guard Frantziko dam. I have never seen at Frantziko dam any water guards of Evrykhrou, Korakou and Tembria.

I know a lot of people. I do not know Michael Anastassi, Rodosthenis Michael, Polis Tsingis, Hilarion Ioannou or Behlul Mustafa. Galata people 30
and Sina Oros people were not coming there in order to watch us taking the water. They were watching their own dams. I do not know if Galata and Sina Oros people take water from Kapatthokas and Vassiliko whenever they like. Vassiliko dam is below the bridge near the asphalt. Its Koftousa is further down and it is visible from the asphalt. From sunrise the water runs from Koftousa and goes to the river. I know that the water of Vassiliko is not used for irrigation during daytime. The dams of Vassiliko and Koftousa are not the same as Frantziko but the water guards still go there diverting the water from Kapatthokas. I do not know when they take the water and when they divert it. I do not know if they remain 40
there guarding it. When we take as much water as our field requires then we divert the water from one Koftousa and the water runs into Ayios Nicolas river and also from the other Koftousa from which the water runs into the river Garyllis. It is not true that the system is that Kakopetria people should irrigate at night time, they irrigate whenever they like. It is not true that for the last 7 years I have never irrigated at night time. I irrigated last year at night time. I irrigated last year once or twice. Last year I irrigated during the daytime more times than night time. Last summer I was irrigating my field every 15-18 days or twice a month. In 1931-1932 I was a water guard. In 1931 I had also 50
another companion assisting me. In 1932 I was alone. My duty as water

guard was to put the water into the Frantziko channel and then to follow the turn and allocate water. I was doing this day and night. I was there on duty for 24 hours. This was my duty. When everybody irrigated we diverted the water and it flowed into the river. At night time when there was nobody to irrigate we used to cut the water and put it into the river. At daytime there were always people who irrigated whenever they liked. I do not know if the right of Kakopetria to irrigate is from the rising of Pleiads up to sunrise and this up to the 28th August or 15th August according to the old style calendar. I do not know about this. I do not know if after the 15th August Kakopetria people are entitled to irrigate from the rising of the Orion. I know Salim, the L.R.O. Clerk. I do not know if he came and examined the water. I do not know Salim. I know Salahi. I do not remember when in 1901 when the alleged action was instituted by Galata and Sina Oros against Kakopetria if any L.R.O. clerk came to the village. On no day did we have any interference. Not even on Tuesdays. Kakopetria people are watering 300 donums of irrigable land. I do not know how many donums of fields are irrigated in the other villages—am I a surveyor ?

From our village down till Petra is about 9 English miles. Elia is about 1 mile below Petra, i.e., 10 English miles. I do not know if the fields around there are irrigable. I go there for shooting but I did not see them. I do not know if 4-6 thousand donums are irrigated. We consider the water which comes from the springs in our property as our own. We are not using the water of the springs from our own property because it is low down and flows into the river. These springs are one donum inside our fields or half a donum inside our fields and the water flows into the river. The water of two or three springs is used for irrigation purposes. The water of the remaining springs is not used for irrigation and flows into the river.

We cannot use it for irrigation as we cannot conduct it upwards. This water comes from springs in properties belonging to Kakopetria people and we consider the water as belonging to the Kakopetria people as well. We are irrigating our fields and using as much water as is coming from our springs and flows into the river. The same quantity of water which comes from our springs and flows into the river we want to use to irrigate our lands whenever we like.

Q. I put it to you that only since 1941 and afterwards it occurred to you that since the water passes by your village you have the right to take as much water as you like ?—A. Since the water is running under our nose we should take it.

Re-examination by Mr. Hadji Pavlou :

The water of the private springs except two of them flows into the river. We are watering our fields not because the water comes from our springs but because we have the right to take the water from the river. We are taking from the river as much water as is flowing from the springs. If we had no springs in our properties then we would not leave our properties to dry out, we would use the water according to our rights.

Q. What was the system before 1941 ?—A. The system was the same as we have now. There has been no change in the system before or after 1941. From the time I remember the system of irrigation is the same. I know that there are title deeds for two or three springs.

*In the
District
Court of
Nicosia.*

*Defendants'
Evidence.*

No. 23.
Evidence of
Hambis
Makris,
22nd June
1948,
Cross-
examina-
tion,
continued.

*Re-examin-
ation.*

In the
District
Court of
Nicosia.

No. 24.

EVIDENCE of Yiannis Dhemosthenis (Witness No. D.6).

YIANNIS DHEMOSTHENIS, sworn.

Defendants'
Evidence.

No. 24.
Evidence of
Yiannis
Dhemos-
thenis,
22nd June
1948.
Examina-
tion.

I am of Galata. I am 38 years old. I was a member of the Irrigation Committee. I ceased to be a member of the Irrigation Committee since two years. I have been a member of the Irrigation Committee for 8 years. I am of Galata. I have been living in Galata for the whole of my lifetime. I know Kapathokas and Vassiliko. We take the water to these two dams from Ayios Nicolas. No Kakopetria people interfere with our irrigation from these dams. I know Frantziko dam. We never went to take water from Frantziko dam. I know Karkotis river. Karkotis river starts at the point where Ayios Nicolas and Garyllis river join. These two rivers join a bit further down from the two bridges near Kakopetria. At the point where Karkotis river starts is the Akteon coffee shop. There is also a mill there. The mill of Hadji Stavris. We have water guards. We give them directions from where to take the water. We never send water guards upwards from Kapathokas and Vassiliko. After Galata and Sina Oros there are also other villages which irrigate from the river Karkotis. These villages take water after we irrigate. 10

Cross-
examina-
tion.

XX'nd. by Mr. Clerides :

20

I ceased to be a member of the Irrigation Committee two years ago. On the 19th February, 1946, Kakopetria brought an action against the down villages Galata and the other villages for the water. Among the Defendants was Galata representative Evolides Gavrielides who was the treasurer of the Irrigation Committee of the village of Galata.

On the 19th February, 1946, I was a member of the Committee. Plaintiffs informed us that they did not want to proceed with the action against us. We, the Galata people, irrigate from the dam of Vassiliko and Kapathokas. Kakopetria people have also properties which are irrigated from these two dams. From these two dams Galata and Sina Oros are not entitled to irrigate any time they like but we have got certain signs. We have got the right to conduct the water into the channel from the rising of the Pleiads till sunrise and this up to the 28th August or 15th August old style calendar. After the 28th August we are entitled to take the water from the Orion till sunrise. During the other hours except these the water flows in order to go to the other villages to irrigate. I do not know if during the same hours we are entitled to take the water from these dams. Kakopetria people have got the same rights for the channels above us. I know Frantziko dam. I never went up there. I do not know Karydhi dam. Neither Apliki dam. I do not know Ayios Nicolas dam either. I never went up there. I know that Galata and Sina Oros people brought an action against Kakopetria people for the water. It is an old case and I do not remember if Galata and Sina Oros were claiming that Kakopetria people should not irrigate as much as Kakopetria people used to irrigate. I know Kapathokas and Vassiliko. I do not know if the reason of the action was that Kakopetria people were using from Frantziko dam more water and they left very little in the dams of Kapathokas and Vassiliko. We have never used up to now stones and bushes for the dams for directing water. We are using 30 40

stones and branches for conducting water and we are also using earth in order to fasten the stones. I am sure that it is our right. We are not taking the whole water of the river of Kapathokas and Vassiliko. The water is also taken to the other dams. The other dams are Sina Oros, Makris and Ghanis. Because we have other 3 dams further down we do not take the whole water of the river. All these 5 dams have the right to take water at the same time and same hours.

Re-examination by Mr. Hadji Pavlou :

10 Kakopetria people have got properties there and they irrigate from the water of Vassiliko and Kapathokas. The fields which are irrigated from Kapathokas and Vassiliko, are very few. These properties of Kakopetria people are below Karkotis. They are adjoining the properties of Galata people.

In the District Court of Nicosia.

Defendants' Evidence.

No. 24.
Evidence of Yiannis Dhemos-thenis, 22nd June 1948, Cross-examination, continued.
Re-examination.

No. 25.

EVIDENCE of Thrassyvoulos Ioannou (Witness No. D.7).

THRASSYVOULOS IOANNOU, sworn.

- Q. Where do you come from?—A. From Kakopetria.
Q. How old are you?—A. Fifty-three years old.
Q. Were you treasurer of the Irrigation Division of Kakopetria?—
20 A. Yes, from 1937.
Q. Up to what year?—A. For 6 years. I was also a mukhtar from 1931 to 1936.
Q. You know the river Karkotis?—A. Yes.
Q. From what point does this river start?—A. From the two bridges at the point the two rivers join.
Q. What rivers?—A. Of Ayios Nicolas and Karvounas or Garyllis.
Q. Have you ever heard it suggested that the river Karkotis extends to any point above Kakopetria above the village?—A. No, never.
Q. On what point does the river Ayios Nicolas end?—A. At the two
30 bridges.
Q. Of Garyllis and Karvounas?—A. Yes.
Q. We know that there are some dams at Ayios Nicolas?—A. Yes.
Q. But we are only concerned with the Frantziko dam?—A. Yes.
Q. Frantziko dam takes its water from this river of Ayios Nicolas into a private channel?—A. Yes.
Q. That channel extends to what length?—A. From the one end of the river till the other it is about half an English mile.
Q. This is a subsidiary channel?—A. Yes.
Q. We have the main Frantziko channel and the subsidiary Frantziko
40 channels?—A. Yes.

No. 25.
Evidence of Thrassyvoulos Ioannou, 22nd June 1948. Examination.

*In the
District
Court of
Nicosia.*

*Defendants'
Evidence.*

No. 25.
Evidence of
Thrassy-
voulos
Ioannou,
22nd June
1948,
Examina-
tion,
continued.

Q. And at a point away from the dam there is the Koftousa?—
A. Yes.

Q. At what point from the dam is this Koftousa located at what length?—*A.* One-fourth of an English mile.

Q. I want you to explain to Their Honours whether Koftousa is a kind of sluice that stops the course of the water running along the channel and diverts it into the river?—*A.* Yes.

Q. Now at that point of the Koftousa where Koftousa leads the water into the river is there any chain of channels that the Koftousa supplies?—
A. Yes. 10

Q. These are the private channels that take the water from the Koftousa to irrigate certain area of Kakopetria?—*A.* Yes.

Q. What is the length of these private channels that are supplied by water from the Koftousa?—*A.* About 10 donums. From Koftousa up to Ayios Nicolas is 10 donums. There are various branches.

Q. So Koftousa fills double purpose. One is to divert the water from the main Frantziko channel into the river and the other is to supply these channels for irrigating the land?—*A.* Yes.

Q. That is the function of the Koftousa?—*A.* Yes.

Q. Who has been standing the cost of maintaining and cleaning these 20 channels?—*A.* The Irrigation Committee.

Q. I am mainly concerned from the dams up to the Koftousa.—*A.* Yes.

Q. And before the existence of the Irrigation Committee?—*A.* The owners of properties.

Q. Of what village?—*A.* Kakopetria village.

Q. Did it ever happen that any other village other than Kakopetria contributed to the cost of cleaning or maintaining these channels?—
A. No, never.

Q. We know that from the Koftousa the water goes along the main channel and it irrigates land on both sides and when the water is no longer 30 needed where does the main channel flow its water in?—*A.* Into the river.

Q. What river?—*A.* Garyllis.

Q. And eventually it finds its way into Karkotis?—*A.* Yes.

Q. Throughout your lifetime do you remember whether there was any restriction placed on the inhabitants of Kakopetria taking as much water as was necessary to irrigate their lands?—*A.* No.

Q. Was there ever any system of distributing water by hours?—
A. No.

Q. What system was there for distributing amongst these inhabitants who irrigated their lands before the advent of the Irrigation Division?— 40
A. The mukhtar appointed water guards and the water guards were supervising and keeping the water.

Q. I want you to remember that I am asking you before the advent of the Irrigation Division in 1937?—*A.* Yes. From 1931 I used to appoint water guards regularly.

Q. Before do you remember what was the practice of distributing water?—*A.* The same system.

Q. Now tell me all these lands which are irrigated to-day when were they irrigated for the first time?—A. These properties have been irrigated since olden times.

Q. From your memories in this world you remember this land to be irrigated?—A. Yes.

Q. And in the condition in which you first saw them irrigated in the same way as you first saw them they are irrigated to-day?—A. Yes.

Q. Tell Their Honours was there any time during which Kakopetria people were taking this water for irrigating their land?—A. No, they had
10 no time.

Q. During the 24 hours of the day and every day of the week were they conducting as much water as they wanted?—A. Yes.

To Court: We had no lists of those who were entitled to irrigate but the water guard was arranging.

X'on. continued: Q. The land irrigated are known I suppose to every one in the village?—A. Yes.

Q. They always had been?—A. Yes.

Q. And you appointed water guards to watch over what?—A. In order to supervise there and keep the order and give water to those who
20 were in need.

Q. Supposing I was allowed by the water guard to start irrigating my field of one donum and I start irrigating. When am I supposed to stop irrigating that field?—A. When the whole field absorbs the water.

Q. So the time was dependent on the adequacy of the irrigation?—A. Yes.

Q. This has been always the case?—A. Yes.

Q. Do you yourself employ water of Frantziko for irrigating your land?—A. Yes.

Q. Since when?—A. Whenever my field requires.

Q. Since when?—A. From the time I remember—when I inherited
30 the property from my father.

Q. So you have property you irrigate which you inherited from your father?—A. Yes.

Q. And it has always remained in the family?—A. Yes, I have also got other properties which I have given to my children.

Q. It is suggested that the Kakopetria people can irrigate their lands during certain hours in the night?—A. No.

Q. And according to certain stars and signs in the sky?—A. No.

Q. In your lifetime do you ever remember putting into practice this
40 suggestion as regards the dams of Frantziko?—A. No never.

Q. Do you remember any water guards ever coming from any other villages to interfere with these dams of Frantziko or with the Koftousa at Frantziko?—A. No.

Q. Never?—A. Never.

Q. Now tell me along the other river Karvounas there are two dams Karydhi and Apliki?—A. Yes.

In the
District
Court of
Nicosia.

Defendants'
Evidence.

No. 25.

Evidence of
Thrassy-
voulos

Ioannou,
22nd June
1948,
Examina-
tion,
continued.

In the District Court of Nicosia.
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Defendants' Evidence.
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 No. 25.
 Evidence of Thrassyvoulos Ioannou, 22nd June 1948, Examination, continued.

Q. What you said about Frantziko does it also apply to these two dams?—*A.* Yes.

Q. But there are two other dams before the confluence of the tributaries namely Vassiliko and Kapatokas?—Yes which belong to Galata and not to Kakopetria.

Q. In these two dams of Vassiliko and Kapatokas does Kakopetria village claim any exclusive rights?—*A.* No.

Q. So when the water reaches these two dams Kakopetria people would say that they have no interests in these two dams?—*A.* No.

Q. Tell me since the advent of the Irrigation Division you acted as Treasurer?—*A.* Yes. 10

Q. What was the source of income of this Irrigation Division since its inauguration?—*A.* By taxing the properties of those who were irrigating according to the donums.

Q. Irrigated from what dams?—*A.* Frantziko, Karydhi and Apliki.

Q. You were collecting rates?—*A.* Yes, 2s. per donum.

Q. Depending on the area irrigated?—*A.* Yes.

Q. Was it a variable rate or fixed rate?—*A.* No, the Committee fixed it. First it was 2s. and then 4s.

Q. And the President of your Committee was the Commissioner?—*A.* Yes. 20

Q. And so the income was applied towards what expenditure?—*A.* To the cleaning and building of the channels and for the payment of the water guards.

Q. Apart from the ordinary maintenance expenses did they effect any substantial improvement in the channels?—*A.* We built at the place where it was necessary.

Q. With what?—*A.* With cement.

Q. Was it a big expenditure?—*A.* Sometimes £40 and sometimes £100. 30

Q. Most of this expenditure went on Frantziko channel?—*A.* Yes, because there are more properties there at Frantziko.

Q. Have you ever heard it suggested that Kakopetria is only entitled to take from the Frantziko and other two channels only at certain hours in the night?—*A.* No never. Pleiads rise at the beginning of next month.

Q. In July it begins to be visible?—*A.* Yes, I think so. Pleiads are visible about an hour before sunrise. I know Orion it is formed with 3 stars. I do not know when the Orion is visible.

Q. You take enough interest yourself in the rising of these two systems of stars?—*A.* No. 40

Q. In all how many donums of land Kakopetria irrigates?—*A.* About 300 donums.

Cross-examination.

XX'nd. by Mr. Clerides :

I am not interested when Pleiads or Orion rise. Nor did I ever try to see whether this month Pleiads is visible. Nor can I say when the Pleiads rise on the 28th August. Also I cannot say when Orion rises on

- the 28th August. I know Yiannis Papa Antoni, former mukhtar of our village. I succeeded him as mukhtar. I do not know if he was ever employed as water guard or if he has ever been a water guard. It is the first time that I hear that he was a water guard. If he has been a water guard for the other villages I do not know. I do not know if he had been water guard for Galata, Evrykhon and Tembria. I know this man but I do not know his name. (*A person by the name Christodoulos Hji Yianni brought before the Court.*) It is not true that on a day in 1936 when Yiannis Papa Antoni was absent from the village I was appointed by this man
- 10 Christodoulos Hadji Yianni as water guard and was paid 4s. When I was a mukhtar I had the valuation book with me. I had also the plans of the village. I saw in that plan the names of rivers. I saw the river Karkotis in the plan. It is from the two bridges. I do not remember if in the L.R.O. plans Karkotis river is called from the two bridges upwards. The river which comes from Ayios Nicolas has more water than that which comes from Karvounas. Ayios Nicolas river has got more water than Garyllis. I do not know if you know this river up to Troodos as Karkotis. We know the river as Karkotis from the two bridges below. I think that the time when Kapathokas and Vassiliko take the water is when Orion and
- 20 Pleiads rise but I have no properties there and I do not know. My co-villagers have very few properties at Galata. I do not know when they take water from Kapathokas and Vassiliko because I have no properties there. The water which flows which is a bit further up from the coffee-shop runs into the river and also to the fields. The fields are also irrigated. I know that from Vassiliko very often they irrigate from this water even to-day. They may not irrigate from Vassiliko dam in Summer during the daytime in June, July and August. I do not know the hours when Galata people take the water and I do not know if they are the same hours as Kakopetria people are entitled to. We are entitled, we the Kakopetria
- 30 people, to take the water whenever we like and as much as we require. Gardens or fields may be irrigated every 15 to 20 days. If we have water and if we want we irrigate every 10 days. It is not correct that whenever there is much water we irrigate every 25 days. We irrigate every 15 days.

When we have much water we can irrigate every day. Shall we leave our properties to get dry. It is not possible to irrigate every 3 days. If the field requires every 5 days then we will irrigate it. We appointed water guards. The Irrigation Division last year had water guards. I ceased to be a member of the Irrigation Division 6 years ago and I am

40 not interested now. I do not know whether there was water guard last year.

I have properties at Frantziko which were irrigated last year. My wife was going and irrigating it. I was a cafe keeper and I did not go. I have been a cafe keeper since 1917. Since 1917 I was not going there unless I had work to do. I was going to Frantziko dam as I was a member of the Irrigation Committee. How could I not go there. When I was a member of the Irrigation Committee I was going there about 10 to 15 times every year and supervising the work done to the channels. In summer I left my son at the cafe and was going to the dam and now

50 that I am in court I left somebody else there. In the months of June, July, August and September I was going there up to the dam whenever

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No. 25.
Evidence of
Thrassy-
voulos
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District
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Evidence.*

*No. 25.
Evidence of
Thrassy-
vouslos
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Cross-
examina-
tion,
continued.*

I was called to see that the channel suffered damage. It never happened to me to see any water guard from the down villages. They were coming quite often to my coffee shop and had coffees. I did not see them taking the way upwards after they had taken their coffees. Sometimes they were holding their spades and sometimes not. They were going to guard the water from there downwards not upwards. Near the coffee shop there is the Vassiliko and Kapatthokas. On the 27th May I was not at Koftousa. They came and took me from my house. There I found a certain Polis Tsingis alone. I went in consequence of a complaint made to me that he went to cut the water from Koftousa. It was not their right to cut the water from Koftousa. They did not have the right to go and cut the water from Koftousa and conduct the water down. I prevented them from diverting the water to follow to their village. On the 3rd June, 1941, Papa Christoforos and Christodhoulas Hadji Yianni came to my coffee shop. They did not go from there upwards. They came and told us since it is a dry year let us take some water to take it down. They said that the water belonged to them. They were going to take it and I said if it belongs to you go and take it. (*Witness corrects himself.*) If it belongs to you there is court. Up to now we know that it does not belong to you. We told them that they had no right to interfere with the water from there upwards.

10

20

*Re-examin-
ation.*

Re-examination :

Q. You were questioned about the frequency of putting water into the land?—*A.* Yes.

Q. You are an agriculturist?—*A.* Yes.

Q. And you know that when you put more water than the land can stand you do more harm than good?—*A.* Yes.

Q. And irrigation depends largely on how the land has its moisture?—*A.* Yes.

Q. And we know that this garden which Kakopetria has established tends to delay evaporation of the moisture?—*A.* Yes, because there are many trees and they make shade.

Q. Would it be correct to tell Their Honours that the frequency of irrigating these lands tend to diminish from what was before? That the frequency is less to-day than what used to be?—*A.* Yes.

Q. Due to this development?—*A.* Yes.

(Short adjournment.)

30

40

*No. 26.
Evidence of
Sofoclis
Hadji Har-
alambou,
22nd June
1948.
Examina-
tion.*

No. 26.

EVIDENCE of Sofoclis Hadji Haralambou (Witness No. D.8).

SOFOCLIS HADJI HARALAMBOU, sworn.

I am 70 years old. I am of Kakopetria. During my whole lifetime I have been resident of this village. I have gardens at Kakopetria. These properties were irrigated with the water of Ayios Nicolas river. There is the Frantziko river dam there. My properties are about 2-3 donums

away from the Frantziko dam. I was irrigating my properties whenever they required irrigation. The village appoints water guards for supervising it. Their duty is to distribute the water and keep the turn. This system is followed from the time I remember. I inherited this property from my father and father in law. They were irrigated in the same way as I do now. We were watering in daytime and night time. Whenever the water guard instructed us to do so. My properties are only at Frantziko dam. The other river is Garillas and comes from Karvounas. This river has also dams. There are co-villagers of mine who irrigate their lands from this river. From the time I remember I have never seen near Frantziko or the place where the other co-villagers of mine go and irrigate any water guards from other villages except our water guards. At Ayios Nicolas I had properties under my lease from the Archbishopric from 1931 to 1937. I sowed this field with mahou and beans. These properties which I sowed with mahou and louvia are irrigable lands. The water comes from Kokinorotsos and there is a dam there—Ayios Nicolas dam. During the 6 years I had in my lease these properties of Ayios Nicolas no one came from other village to interfere with the irrigation of my fields. In the properties of Kakopetria there are many springs. There are about 35 springs. The water of the springs comes out throughout the year. Some fields are irrigated from the water of these springs and the surplus flows down the river of Ayios Nicolas. The fields in the neighbourhood of Garyllis have springs and the surplus water of these springs flows into the Garillis river. We are taking one-fifth to one-sixth of the Frantziko dam and take it to our channels for irrigation. Some quantity of water remains in the dam of Frantziko which flows down. We are not taking it all because we are not requiring it. The lands irrigated by Apliki, Karydhi and the other dams in the vicinity there are 300 to 320 donums. These dams were irrigated from the olden times. We have changed our gardens into orchards. In the places where the trees grew up one cannot pass through. There are young trees and also there are gardens which have not been planted with trees. The volume of water required by our gardens to-day is less than the volume of water required by our gardens before. Mahou and beans require more water. We used to irrigate them every 8 days but now 20 to 25 days. We are not watering the orchards every 8 days because much water does more harm to the trees than good. From the one side the water of Ayios Nicolas flows and from the other the water of Garyllis river flows and both of them join below the two bridges near the mill of Hadji Stavris. At the confluence of the two rivers below the river called Karkotis the water is doubled and it flows downwards. Before we reach the two bridges near Kakopetria are Kapathokas and Vassiliko. Kapathokas is above Kakopetria and Vassiliko is just near the bridges. Galata people irrigate from Kapathokas and Vassiliko dams. I do not know what happened to the water from there and below. I do not know if my co-villagers have got properties there at Galata which are irrigated with the water of these two dams. The water guards from other villages did not come in order to cut the water. They had not the right to do so. The total volume of water coming from the springs in private properties is more than the water of the one-fifth or one-sixth of the river water which we use for irrigating our properties.

*In the
District
Court of
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*Defendants'
Evidence.*

No. 26.
Evidence of
Sofoclis
Hadji Har-
alambou,
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In the XX'nd. by Mr. Indianos :

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No. 26.
Evidence of Sofoclis Hadji Haralambou, 22nd June 1948, *continued.* Cross-examination.

I know these springs one by one. I see these springs every day. I did not see all the springs lately at one and the same time. I did not measure and I do not know what volume of water is coming from each spring. We can find the volume of water coming from the springs and from other springs by estimating. The water from the springs is always more. I remember when Galata and Sina Oros had a dispute against our village. In 1903 when I got married I was about 22 years. The people of Sina Oros and Galata were claiming against Papa Symeos Nicola and another. I do not know if the Court gave them the right to irrigate from the 5 dams. It is not true that from that time people of Sina Oros and Galata are taking water at the same time as we do. I do not know if people of Sina Oros and Galata are taking the water according to the appearance and visibility of stars. It is not true that we are entitled to take water from the rising of the Pleiads till sunrise up to the 28th August. We have nothing to do with Pleiads. We are watering whenever we like. Also it is not true that we are entitled after the 28th August from the rising of Orion till sunrise. In good years we put one-sixth of the river in our orchards. In dry years the water is not affected. It may diminish a little. When the water is decreased we are decreasing the amount we take. I have never been a water guard. I have got two or three donums of land near Frantziko. When I had these properties I was watering them every eight days. The first piece which I gave to my child was in 1925. The second piece was in 1928 and the third in 1932. I gave my 3 donums to my 3 children. It is not to 3 children but 4 children and I gave to each one three-fourths or $\frac{1}{2}$ donum. This was from 1925 till 1939. The trees were planted by my children after 1925. The properties which I gave to my children and planted them with trees are irrigated every 20 to 22 days. From the time I gave this property to my children I ceased irrigating them. My gardens are two or three donums away from Frantziko. I was irrigating them in daytime. Ayios Nicolas dam is not visible from Frantziko. At the time I was going and irrigating my fields there I never saw any water guard from other village near Frantziko. From Ayios Nicolas dam only the lessees of Ayios Nicolas properties irrigate their lands and the surplus flows into the river below. The irrigable land of the monastery is irrigated. I have got also other properties in other areas in Kakopetria. When I had the properties of Ayios Nicolas monastery I was going and watching also my other properties. Before the land irrigated at Kakopetria was 300 donums now about 60 and 70 houses have been built and 50 donums were washed away by the river.

From the time they were 300 donums the gardens were being planted with trees. No new gardens were established. The water guard brings the water in our land. Ayios Nicolas river is not called Karkotis river. Karkotis river starts from the two bridges and down. The water comes from Kokinorotsos and also from Kannoures and the water joins and flows into one river which is called Ayios Nicolas river. Ayios Nicolas river is called from the confluence of the two rivers at the two bridges and from there downwards it is called Karkotis.

Re-examination. *Re-examination by Mr. Hadji Pavlou :*

I do not know anything about the dispute of Galata and Sina Oros against Kakopetria. I heard only that Papa Symeos Hadji Nicolas was

sued for the water. In 1937 two or three of my children got married and I gave this property to them. This property is near the road and every day I pass by it in order to go to my fields and I see them. I also go and help my children in gathering the crop. Kakopetria lands are irrigated by various dams of Ayios Nicolas and Garillis. From the time I heard about the institution of the action against Papa Symeo I never saw Galata people going up to Frantziko dam or Garilli river.

Court: You have spoken about private springs that come out from private lands or from hali land?—*A.* We have no hali land. They are
10 from privately owned lands.

Q. Do you know if there is title deed for any of the springs that come out of private lands?—*A.* Yes two or three persons have got title deeds.

Q. You knew the existence of these private springs from earlier days?—*A.* Some springs came to existence later.

Q. Did it happen that some of the springs came to existence later some of them changed their source and some of them dried?—*A.* No springs have dried up because the more we irrigate the more the water of the springs becomes.

Q. Do you mean to say that the water from private springs flows
20 throughout the year?—*A.* Yes.

Q. Kakopetria owns apart from irrigable lands other lands?—*A.* Yes.

Q. What is the extent of the fields not irrigated?—*A.* About 450.

Q. Out of these 450 donums are there lands which can be converted into irrigable lands?—*A.* The water does not reach these lands.

Q. So no portion of these non-irrigable lands can be converted with a reasonable effort into irrigable lands?—*A.* Because they are on a higher level and that is why we cannot convert them into irrigable lands.

Adjourned to the 23rd June, 1948, for continuation.

(Sgd.) M. ZEKIA,

30

President, District Court.

22nd June, 1948.

No. 27.

EVIDENCE of Prokopis Kounnas (Witness No. D.9).

23rd June, 1948.

Resumed.

Appearances as before except for Mr. Clerides who was absent.

PROKOPIS KOUNNAS, sworn.

I am 70 years old. I have been a water guard of Galata for about
15 years. I was a water guard of Galata village. There is a village
40 Sina Oros which has its own water guard. I was taking the water of
Galata and Vassilikos at first. I was not going from there upwards.

*In the
District
Court of
Nicosia.*

*Defendants'
Evidence.*

No. 26.

*Evidence of
Sofoclis
Hadji Har-
alambou,
22nd June
1948,
Re-examin-
ation,
continued.*

No. 27.
*Evidence of
Prokopis
Kounnas,
23rd June
1948.
Examina-
tion.*

In the District Court of Nicosia.
 —
Defendants' Evidence.
 —
 No. 27.
 Evidence of Prokopis Kounnas, 23rd June 1948, Examination, *continued.*

The dams of Kapatthokas and Vassilikos are in the river of Ayios Nicolas. I know the river Garillis or Karvounas. I was not taking water from the dams of this river. I was a water guard for Vassiliko and Kapatthokas for 5 to 6 years. During the other years I was a water guard of Makri and Sina Oros dams. When I was there at Vassiliko and Kapatthokas as a water guard I never saw any other water guards from the other villages going upwards to Ayios Nicolas river. We never quarrelled with Kakopetria people because they cut water from Kapatthokas and Vassilikos. When there was water in the dams of Vassiliko and Kapatthoka there was also water in the river because there was water also in the other dams. 10
 The rivers Ayios Nicolas and Garillis join at the mill of Savvas Hadji Stavrinou. I know the two bridges of Kakopetria. The mill of Hadji Stavrinou is in between the two bridges just below. The water of the two rivers, Ayios Nicolas and Garillis, join at the two bridges downwards thus forming a river which is called Karkotis.

Cross-examination.

XX'nd by Mr. Indianos :

I was a water guard as from 1930 to 1932. For 15 to 17 years I was a water guard at the five dams. In 1947 I was not a water guard. I do not remember that I was a water guard in 1928, 1930, 1932 or 1934. I was a water guard for about 15 years. I did not say to Mr. Hadji Pavlou 20 that I was a water guard for 5-6 years. I was a water guard at Kapatthokas and Vassilikos dams for three years. During the other years when I was a water guard I was on duty at the other dams. I do not remember the years in which I was a water guard at Vassilikos and Kapatthokas. My duty when I was a water guard at Vassilikos and Kapatthokas was to guard there the water and I was unable to know what was happening in the other dams. I could not know what was happening at Frantziko dam. The water guards from other villages were not going from Vassiliko and Kapatthokas and upwards because they had no right. They used to go to the coffee shop and have coffee with us. I stayed there at the 30 dams for certain years. When my work was finished I was leaving the place and returning to Galata. When I was at the village away from my duty I did not know what was happening at Frantziko dam or the other dams. We Galata people take water according to certain signs on the sky. We take water as from the rise of Pleiad up to sunrise and until the 28th August and from the 28th August onwards from the rise of Orion to sunrise. I do not remember if our village and Sina Oros had any dispute at Kakopetria regarding water. I got married in 1900. When I got married I was about 20 years of age. I was a saddle maker and was away from the village. I was going to Pissouri. I ceased to be a saddle 40 maker in 1918 when my wife died. Every year I was absent from the village for three months and the other nine months I was in the village. I remember Sofronios Loukas. I remember Sofronios but I do not know if he was a representative in regard to the dispute of Galata and Kakopetria. I do not know when Kakopetria people take water and I do not know also if they are taking water at the same time we do take. I know that the villages down from Galata, that is Petra, Korakou, Evrikhou, take water with signs on the sky. From the same water from which we take other villages Sina Oros, Evrykhou and Petra take also from this water. We take water up to the 28th of August as from the 50 rise of Pleiad. Before that time the water flows down in the river.

I do not know when the villages below are taking water. I never saw any water guard from the down villages at the dams where I was a water guard. Water guards from Tembria and Korakou came up these dams but I did not see Petra water guards. I do not know whether Kakopetria has the exclusive right of these waters. Kakopetria, Sina Oros and Galata people claim the water of these dams as their own. Why do you mix Galata, Sina Oros and Kakopetria? Galata and Sina Oros do not claim, are not interested with Kakopetria people in regard to water supply. It is not true that Kakopetria people claim to irrigate from the five dams of Frantziko, Vassilikos, Kapathokas and the two Karidhi dams at the same hours that we claim. I was not subpoenaed. They have told me to come here and give evidence a fortnight ago. It is a long time that I know that there was a dispute between Kakopetria and Petra. Kakopetria people came and asked me something and I told them what I knew because I was a water guard for many years. Alexandros Savvas came and told me and we had a conversation on this subject. We did not discuss. Yiannis Demosthenis did not come to meet me at the village. I do not know whether Yiannis Demosthenis wanted to give evidence in this case. I learned that Yiannis Demosthenis gave evidence in this case when I came to Nicosia. We did not come together to Nicosia. From yesterday till to-day I did not see him. It is not true that Karkotis river comes from Troodos downwards. That is the river of Ayios Nicolas. I never went to Frantziko.

Re-examination by Mr. Hadji Pavlou :

I ceased to be a water guard since 2-3 years ago, because my sight was no more good. It was in 1945. During the 15 years I was a water guard I used to go one year to Vassiliko, one year to Kapathokas, one year to Sina Oros and one to Makris and so on. Galata village appoints water guards for the five dams the one year and the other year Sina Oros appoints water guards not for all dams but for Dorontides dams. During the 15 years I was a water guard I was at Kapathokas and Vassilikos for three years. I am not the owner of any land. I was a water guard for the irrigation division for four years. I was a water guard for the dams of Makri and Granos.

No. 28.

EVIDENCE of Athanassios Loukas (Witness No. D.10).

ATHANASSIOS LOUKAS, sworn.

I am the owner of Loucoudi water. I have property at Kakopetria and I have a private spring. I have its title deed and I produce it (Exhibit 10.) This spring has got a channel through which its water runs into the river. The river into which the water flows is called Karkotis. I have got a hotel there which is called "Loucoudi" and the water is also called Loucoudi. The spring is just near the hotel. I do not know with what name the villagers call it.

XX'nd by Mr. Indianos :

I am the owner of Loucoudi hotel which is the biggest in the Kakopetria village. I have other properties in Kakopetria. I am going to Kakopetria as an enterpriser as from 1933 when I built the hotel.

Re-Examination : Nil.

*In the
District
Court of
Nicosia.*

*Defendants'
Evidence.*

No. 27.
Evidence of
Prokopis
Kounnas,
23rd June
1948,
Cross-
examina-
tion,
continued.

*Re-examin-
ation.*

No. 28.
Evidence of
Athanassios
Loukas,
23rd June
1948.
Examina-
tion.

*Cross-
examina-
tion.*

*In the
District
Court of
Nicosia.*

EVIDENCE of Grigoris Ioannou (Witness No. D.11).

GRIGORIS IOANNOU, sworn.

*Defendants'
Evidence.*

*No. 29.
Evidence of
Grigoris
Ioannou,
23rd June
1948.
Examina-
tion.*

I am 48 years old. I am from Kakopetria. I was born there and during my whole life I have been living in Kakopetria. I have been a water guard for 20 years. Up to now I was a water guard. Duties of the water guards start from the 1st July. I was a water guard at Garilli river. Garilli river has got no other name. It comes from Karvounas. Garilli river has got three dams, Pofolia dam, Daoutides and Apliki dams. Daoutides dam was formerly called as Garilli dam. My co-villagers irrigate from these dams. They have channels through which they conduct the water and irrigate their gardens. In the channels of these dams we do not put all the water of Garilli river. We put only one-fifth or one-sixth and/or as much as we require. We do not take more than one-fifth or one-sixth of the water, because we do not require it. We do not water on any signs. We take water when we like, day and night time. They use more water in daytime. If any one is absent from the village we inform him in time and he goes and irrigates at night time. During the years I was a water guard no water guard from the down villages came to cut the water from Garillis river. Nobody came to me to make any complaints that we were taking the water without any right. I have gardens. They are two pieces. I inherited them from my father. My gardens are irrigated from Ayios Nicolas river. My gardens are irrigated from the dam of Frantziko. I remember my parents irrigated from the dam of Frantziko. At Frantziko the water is free and so are the other dams, and is the same system as we irrigated from the dams of Garilli river. I never saw any water guards from the other villages come and cut the water from Garillis river. These two rivers, Garillis and Ayios Nicolas, join at the mill of Hadji Stavrinou where they form another river which flows downwards and which is called Karkotis river. The river of Ayios Nicolas is not called Karkotis. As a water guard, my estimate is that the dams of these two rivers Garillis and Ayios Nicolas irrigate about 300-350 donums. The area of the irrigable land has decreased because houses have been built and roads were made and also the river washed away some lands. About 50 donums were lost. This irrigable land has been irrigated from the olden times. Trees have been planted on them. There are gardens which are not covered with trees. Before we planted trees in the gardens we sowed them with mahos, beans, etc. The gardens which have been planted with trees require less water. We cannot water them every day and spoil them. We did not water them weekly but we watered them monthly. When we had the summer crop plantations we irrigated them every week. In our lands at Kakopetria springs exist. These springs are perennial. The number of these springs is 30-35. And these springs are in our fields. They are not in khali land. The volume of water of these springs is not uniform. My estimate is that the water of the springs, of the private springs, which flows into the river is more than the volume of the river we use for irrigation. The springs were from the very beginning but the number of them increased. The 30-35 springs were not altogether from the very beginning. Later the number was increased. Some were found later. As a water guard I was irrigating freely. I have got a counterfoil. I have the names of those who irrigate lands in turn and

not to quarrel. The irrigation committee which appoints me gives me the counterfoil. It is blank and I fill it with the name of each one. I produce it. (Exhibit 11.) The system is that when one irrigates his fields we do not fix him the hour. He irrigates as much as his field requires. Eight to 10 days are required to irrigate the whole area of land at Kakopetria, and when these eight to 10 days finish then they start from the beginning. When they put the water in the dams and they do not require it then they leave it in the river. I know the Koftousa and Frantziko dams. When the Koftousa is removed then the water goes and irrigates the fields of Frantziko and then from there the water goes into Garilli river. The water from the Frantziko flows through my field and then it goes to Garilli river. Only about 10 donums are irrigated from the water of the private springs. There are springs which are lower down. The fields are higher up and they cannot be irrigated and there the water flows into the two rivers.

XXnd. by Mr. Indianos :

Exhibit No. 11 does not bear my signature. It is the signature of the Mukhtar. My signature is in other counterfoils. If one loses his turn that is he does not irrigate his field when he is notified then he has to wait until his next turn comes after eight days. There is a note in the counterfoil in this respect that if he fails to go in time he loses his turn. Exhibit 11 is dated 1947. The Kakopetria irrigation division was formed about 10-11 years ago. From the year 1937 when the Kakopetria irrigation was formed I had similar counterfoils as Exhibit 11. I was a water guard for the three dams, the two Karydkia and Apliki. I have never been a water guard in respect of Frantziko dam and I do not know what was happening at Frantziko dam. The number of the springs was less. Then others have been found as well. The springs were less about 10-20 years ago. I do not know about how many less were the springs about 10-20 years ago. I do not know how many springs were found in the last 10-20 years. I was a water guard last year. I do not know whether I will be appointed a water guard this year because I understand that I have to make an application. We submit the application to the Irrigation Committee requesting to be appointed as a water guard. I have not submitted an application. I have not yet made any application. I might do so. Last year I made my application in writing on the 1st July and in the same day at night time I was given appointment. I am going to make an application to be appointed as water guard. I own lands. I have three evleks at Frantziko and one evlek at Apliki. These lands are irrigated. We Kakopetria people have the right to irrigate during day and night time all the days of the week including Tuesdays and to irrigate whenever we like. We have no right to irrigate from Kapathokas and Vassilikos dams. Only those who own lands there irrigate from Kapathokas and Vassilikos and when they are told to do so by the water guards. I do not know if my co-villagers who have properties at Kapathokas and Vassilikos dams irrigate whenever they like. From the time I remember it is not true that Kakopetria people irrigate from the rise of Pleiads till sunrise up to the 28th of August and from the 28th of August from the rise of Orion till sunrise. This happened in all dams and not at the three dams I was guarding where

*In the
District
Court of
Nicosia.*

*Defendants'
Evidence.*

*No. 29.
Evidence of
Grigoris
Ioannou,
23rd June
1948,
Examina-
tion,
continued.*

*Cross-
examina-
tion.*

In the
District
Court of
Nicosia.

Defendants'
Evidence.

No. 29.
Evidence of
Grigoris
Ioannou,
23rd June
1948,
Cross-
examina-
tion,
continued.

we were irrigating whenever we liked. I was a water guard for the three dams and I was issuing receipts for these dams and other water guards were issuing similar receipts as mine for people who irrigated from Frantziko dam. When I was on duty at my dams another water guard was on duty at Frantziko dam. The Frantziko dam is half an English mile from Appliki dam. I was a water guard of Pofolia, Daoutides and Appliki. I was not a water guard at the two Karydkia. Pofolia is half an English mile away from Frantziko dam. Karkotis river starts from the stream Kokinorotsos and Kanoures. The river is flowing away in some fields. I do not know if any one of my co-villagers made gardens in the old bed of the river. I do not know if my co-villager Myrianthopoulos made a garden in this place. I do not know all the springs. I do not know the volume of the water which comes out from the springs as I do not know the number of the springs. I do not know all the springs of Kakopetria. I know only about 25. The water of Karkotis comes from Kokinorotsos and Kannoures. The water of Kokinorotsos and Kannoures join and the river of Ayios Nicolas is formed which flows down to the two bridges. Ayios Nicolas river flows down to the mill and there the water of Garilli comes, they join together and the river of Karkotis is formed. I do not know Ayios Nicolas river by any other name. 10

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(At this stage the Court rose for an interval.)

(Time : 11.35 hours.)

No. 30.
Evidence of
Christofis
Myriantho-
poulos,
23rd June
1948,
Examina-
tion.

No. 30.

EVIDENCE of Christofis Myrianthopoulos (Witness No. D.12).

Resumed at 12.05 hours.

CHRISTOFIS MYRIANTHOPOULLOS, sworn.

I am 56 years old. I am of Kakopetria and I continue to live in Kakopetria. I have been a water guard of Kakopetria for 8-10 years. 1939 was the last year I was a water guard. I am an Aza of the village. Exhibit No. 12 is the title deed in the name of the village commission of Kakopetria. We bought it for £15 from the heirs of Michael Kazanou from Panayiotou Hadji Kyriakou Kazanou. We bought it for £15. We improved it, made a reservoir and we took it to our village. The water increased after the improvements we made. We installed pipes in the village for this water which is used for the domestic needs of the villagers and the surplus of this water flows into the river of Ayios Nicolas. When I was a water guard I was guarding the dams of Frantziko and these dams are not in Ayios Nicolas river. The water from the Frantziko dam flows into channels and the water of these channels is used for the irrigation of our fields. We do not conduct all the water of the river into the channels, we conduct as much water as we require. We have no fixed hours during which we conduct the water from the dam to the channels. It is not when Pleiads or Orion rises that 30 40

we conduct the water. I know what is Pleiads. We conduct the water of the dam in the channels every day, day and night time, and the water guards there are supervising in order to keep order. When a co-villager goes and irrigates his land, we leave him to finish with it. We do not cut the water before he finishes. There is no difference whether his field is small or big. We do not fix him the hour during which he has to finish irrigating his fields. I know the two dams, Kapathokas and Vassilikos. These two dams are lower than Frantziko dam. We are not interested in the two dams. We have no right on them. Galata people take from these two dams water for irrigation. Galata village has got its own water guards. We do not interfere with the two dams at Vassiliko and Kapathokas. Galata water guards do not come to Frantziko dam in order to interfere with it. They do not come also to Garilli river dam. No Galata or any other water guards from other villages come to interfere with Garilli river which belongs to us. I inherited my properties from my parents. My properties are two to three donums. They are in three pieces. I irrigate this property of mine from the water of Ayios Nicolas from the Frantziko dam. My parents were irrigating this property from the same water. My gardens are about two English miles away from the Frantziko dam. They are the last fields from the Frantziko dam. My property is in the neighbourhood of Garilli river. It is from Frantziko dam that we take water for irrigation. Two to three other persons take water for irrigation from the same dam and they have property in the neighbourhood of Garilli river. And after irrigating our properties the surplus water falls into Ayios Nicolas river or Garilli river. The irrigable lands of Kakopetria are over 300 donums. From the time I remember the number of donums of these lands did not increase. They were decreased by 50 donums, because we built houses, made roads and the river of Ayios Nicolas washed away about 15 donums. During the recent years trees were planted in the gardens of Kakopetria. Before very few trees were planted in the gardens. Before the gardens had been planted with trees, makhos, potatoes, beans, tomatoes, etc., were cultivated. We irrigated this summer crop plantation. Now the gardens which have been planted with trees require less water than before when they were uncovered. These 300 donums of irrigable land of Kakopetria are in between the two rivers. The one river is called Garillis and the other Ayios Nicolas. These two rivers go downwards and below the village they join at the mill of Hadji Stavrinou, and from that point downwards the river which is formed is called Karkotis river. I never heard that the river from the point where the two rivers join and upwards if it is called Karkotis. Never. There are springs in the private properties of Kakopetria. The water comes out from the properties automatically. They are perennial. The springs are about 30 even more. Some of these springs irrigate about an evlek of land and then the water flows down into the river. The water of some springs flows into Garillis river and the water of others flows into Ayios Nicolas river. I know these springs. I think that the water which flows from the springs is more than the water of the river which is used for the irrigation of our lands.

XXnd by Mr. Indianos :

50 The 30-32 springs are above the confluence of the two rivers. The one spring, Loucoudi spring, is below the confluence of the two rivers,

*In the
District
Court of
Nicosia.*

*Defendants'
Evidence.*

*No. 30.
Evidence of
Christofis
Myriantopoulos,
23rd June
1948,
Examination,
continued.*

*Cross-
examina-
tion.*

*In the
District
Court of
Nicosia.*

*Defendants'
Evidence.*

*No. 30.
Evidence of
Christofis
Myriantho-
poulos,
23rd June
1948,
Cross-
examina-
tion,
continued.*

and the spring which we bought from the heirs of Panayiotou is above the confluence of the two rivers. It is above the Kapathokas and Vassilikos dams and it is in between the Kapathokas and Frantziko dams. I am sure that the river of Ayios Nicolas is not called Karkotis river, and the place of the river where the spring we bought is, is not called Karkotis river.

Counsel for Plaintiffs reads to witness Exhibit No. 12 : " Boundaries : Coming to the surface from the spring having its source in the field belonging to the heirs of Panayiotou Hj Kyriakou and bounded by : Karkoti River : Succon. of Haralambos Kyriakou ; Gavrielis Kyriakou ; Succon. of Hj Savva Hj Michael ; Road and Monopadi : Property : Running water, 10 the whole supply one wheel-well's spring water."

These are the boundaries as appearing in Exhibit No. 12. I know all the springs one by one. I did not recently see these springs one by one. I know that these springs exist to-day. I used to see 15 springs out of 32 every day. I used to see other springs whenever I could, a period from eight days to two months. The water of these springs has not decreased. This year the volume of the water is increased. I did not measure the volume of water coming from each spring it is considerable. We take as much water from the dams as we require and the quantity of water of the private springs is more than that we are using. I did not 20 measure the total volume of water coming out from the springs. In dry years the water of some of the springs decreases. Only the water of 5-6 springs decreases. The water of the remaining springs except the five does not decrease whereas the water we put into the dams decreases. I do not remember if the year 1941 was a dry year. It might have been somewhat dry. We conduct the water from the dams into our channels as much as we want. I cannot fix the volume we use for irrigation. Before 1941 in dry years we did not put the whole water of the dams into our channels. We had to put only what we needed. I do not know if 30 the water left behind in the dams is less than that we used for irrigation. We do not put in our channels half of all its water, we put the water which we need. I was a water guard for over 8-10 years. I think I was a water guard for these 8-10 years continuously. My last year as a water guard was the year 1939. Except for the Frantziko dam I have never been a water guard anywhere else. I did not know what was happening at the other dams. What I know is when I was a water guard for the 8-10 years and that was before that year, and I knew this as a co-villager. I do not know whether Galata people take water from Vassilikos and Kapathokas dams by looking at signs in the sky. It is not true that it is at the same hours that we take water when Galata people are entitled to. 40 Water guards from the down villages were not coming up to Frantziko dam. They had no right to do so. My fields are at Apliki dam. No one had any right to come to Kakopetria and cut water from its dams. Kapathokas dam is in our village, but I do not know if other water guards from other villages can cut the water. Karkotis river is from the confluence of the two rivers and downwards. Yiannis Papantoniou was not a water guard during my period. I do not know whether Yiannis Papantoniou had ever been a water guard ; what right has he got to be a water guard to the down villages ? He cannot be a water guard of the down villages. The irrigable lands of Kakopetria are about over 50 300-400 donums or put it at any rate you like. I have not measured them. The river washed away about 15 donums. I do not know how

many donums were used for building houses. In the year 1934 when my land was washed away by the river I filled an old bed of the river and made a garden. It is above the Frantziko dam that this garden is irrigated. The land which was washed away by the river is above the Frantziko dam. The people of Kakopetria earn their living from the production of apples and they plant new trees in the same land. From these five dams fields which were made into new gardens were irrigated. An apple-tree in order to bear fruit it takes 5-6 years and it is at that time when the tree thickens and makes shade. And during these 5-6 years until they become fruit-bearing they are irrigated. My evidence is that Kakopetria people have the right to irrigate from the five dams whenever they like and in all days of the week, day and night, even on Tuesdays.

Re-examination by Mr. Hadji Pavlou :

The fields which were turned into new gardens were before irrigable land and were sowed with summer crop plants. We improved this piece of land and then we planted the trees. The new gardens which I have already mentioned are those which we have improved and then planted with trees. It is not in the fields which were not irrigated before that we planted trees. The river washed away about two donums of my field and I used about half a donum from the river's old bed for making a garden. The irrigation committee of Kakopetria brought an action against me for this act of mine.

At this stage Court adjourned to the 25th June at 9 a.m. for hearing and on Saturday, 26th June, for the addresses if that were possible.

In the District Court of Nicosia.
Defendants' Evidence.
 No. 30.
 Evidence of Christofis Myrianthopoulos, 23rd June 1948, Cross-examination, *continued.*
 Re-examination.

No. 31.

EVIDENCE of Charalambos Violari (Witness No. D.13).

25th June, 1948.

Resumed :

Appearances as before.

30 CHARALAMBOS VIOLARI, sworn.

I am 54 years old. I was born at Kakopetria. I went abroad and left Cyprus about the year 1910. I was then 15-16 years of age. I remained abroad about 10 years. I returned to Cyprus about the year 1920. For the last 20 years I have been living in Kakopetria. I am the treasurer of the Irrigation Committee. For the last two years I am the treasurer of the Irrigation Committee. I know Frantziko dam. I know the channel of my village which starts from Frantziko dam and goes right up to the gardens. On the other side I know the river Garilli or Karvouna. It has also dams. This river has dams and channels through which our properties are irrigated. The Kakopetria Irrigation Committee is making all expenses for the maintenance and cleaning of the dams and channels. Every year we appoint one to two water guards. for the guarding of the waters. Kakopetria Irrigation Committee is

No. 31.
 Evidence of Charalambos Violari, 25th June 1948.
 Examination.

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No. 31.
Evidence of
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bos Violari,
25th June
1948,
Examina-
tion,
continued.

paying these water guards. I have gardens. I have three gardens, three donums in all; that is one donum each. Two of my gardens are irrigated from the water of Ayios Nicolas. The other garden is irrigated from the Apliki dam in Garilli river. I inherited my two gardens irrigated from the waters of Ayios Nicolas river one from my mother and the other one from my father-in-law. Before me my mother or father-in-law were irrigating these gardens from the same water, from the Frantziko dam. As far as I remember we watered our gardens by turns whenever the water guards directed us. Day or night, whenever our turn was. We are free to irrigate whenever we like and we take no consideration of Pleiads or Orion. Any day of the week when our turn comes. It happened many times to irrigate on Tuesdays. If my gardens require water and my turn comes then I irrigate them. From what I know, no water guard from the other villages came to cut the water at our village. We conduct from the Frantziko dam as much water as the channel can hold or as much as it was required for irrigation. Down from the Frantziko dam are the Kapathokas and Vassiliko dams. Galata people irrigate from Vassiliko and Kapathokas dams. We do not interfere with these dams of Galata people. The one of the two gardens which are irrigated from the Frantziko dam was washed away by the river at Vateri. The river which washed away the garden was Ayios Nicolas river. It was in 1933-35 when the river washed away the garden and now I am left with one garden on the one side. I bought the other garden from the Archbishopric in 1921-22. When I bought this garden from the Archbishopric it was cultivated with beans, makhos and other green vegetables. Before I bought it this garden was irrigated from Apliki dam. When I bought this piece of land I made it a garden. Then I built a house in it and only an evlek remained. I continued to irrigate this evlek. Nobody prevented me from irrigating this piece of land from Appliki dam. No water guards from other villages ever came to Appliki dam or Garilli river to interfere with us. Many other houses were built as I did. Before the houses were built those sites were irrigable lands. Roads also were made and the river of Ayios Nicolas washed away many other gardens as well as my own. About 40-50 donums of land was used for building houses, making roads and including the donums washed away by the river.

*Cross-
examina-
tion.*

XX'nd by Mr. Clerides :

At Garilli river there are three dams from which Kakopetria people irrigate their gardens. I do not know if the two of the dams are at Karidi. I know that the one is called Appliki. The two above dams have two channels one on the side of the river and the other on the other side of the river. I do not know if the one channel is called Perakhoritiko or Pefkos. I know that the one is called Daoutides and the other Pofolies. At Karidi locality only two dams and two main channels exist. Above Frantziko dam is the dam of Ayios Nicolas. From the dams of Ayios Nicolas only the properties of the monastery are irrigated. We Kakopetria people take from this water for irrigation. We take water to Appliki and we irrigate the monastery's properties there. We take water from Ayios Nicolas dam to Appliki locality every year for irrigation. At Appliki locality the new Kakopetria is situated. There is no direct channel from Ayios Nicolas dam to Appliki. The water flows first into Frantziko dam and then goes to Appliki. From the Ayios Nicolas dam the monastery's

properties are irrigated. When the properties of the monastery are irrigated from Ayios Nicolas dam we cut the water which flows into the river. And the water which flows into the river mingles with the other water. When the water is cut from the dam or if it is left in the channels, it flows into the river and the distance from Ayios Nicolas property till our dam is not even a donum. From Ayios Nicolas dam till our dam at Frantziko is about five donums. The water reaches Frantziko dam mingled and from there we take a certain quantity of water, about one-fifth or one-sixth or a little more or a little less, we do not weigh it. We do not take more than one-fourth of the water. Of course we cannot separate the water we take from that which comes from Ayios Nicolas channel. After we irrigate from Frantziko dam the surplus water will fall into Ayios Nicolas river or into Appliki. The water flows straight into the dam of Appliki. The distance from the place where the water flows up to the Appliki dam is two paces. I am sure of that. At our Appliki dam there is sufficient water. We do not use the whole volume of the water. We take as much as is required for irrigating our lands. We take one-fifth to one-sixth of this water as in the other dams. The river has got water now. If the water of Frantziko dam does not flow into Appliki dam and when there is not sufficient water we put also the water of Ayios Nicolas to meet our requirements. When we put the water of Appliki dam into our channel I do not know the quantity of water which flows into the river. I said we take the one-fifth or one-sixth of the water and remaining four-fifths or five-sixths flow into the river. We appoint water guards every year. One water guard for the one river and the other water guard for the other river. I have never seen any water guards from the other villages at Frantziko or Appliki dams. At the dams of Kapathokas and Vassiliko many times I saw water guards from other villages. I do not know any other water guards even if you mention their names. I know Ilarion Ioannou. I do not know Loizos Nicolas, Michael Anastassi, Rodosthenis Michael, Yiannakos Theopistis. I know Polis Tsingis. I saw Polis Tsingis and Ilarion Ioannou at these dams. I only saw Ilarion Ioannou as a water guard. I saw Polis Tsingis when he had a dispute with the Mukhtar in 1941. I saw Tsingis at Frantziko dam in 1941. I know Yianni Papa Andoni. He is my co-villager. He may be about 80-82 or 90 years old. He was one of the good land owners of the village. He was a Mukhtar for many years. He is moving about the village and comes to Nicosia also. I do not know if he ever acted as a water guard at any time. I do not know if he was a water guard of the down villages. From Kapathokas and Vassilikos dams the properties which are in the vicinity of Galata are irrigated and we Kakopetria people have properties there in the area which is irrigated by the water of these two dams. I had a piece of land there which I have sold. I sold this piece of land many years ago, 10, 15, 18 years ago, I cannot remember. This piece of land was irrigated by my mother or wife. I never went to irrigate it. This piece of land was irrigated either by my mother or by my wife at any time. This piece of land remained as my own property for two or three years and then I sold it. I do not know when we were entitled to irrigate this piece of land because I never went there. My mother or my wife used to irrigate it. This piece of land of mine was situated a bit below the carriage road of Galata and I sold it because it was too far from my village. It is about two donums from the carriage road. I

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know the sluice of Vassiliko dam which is below the bridge. It is visible from the carriage road. Many times I noticed that the water was running into the channel and sometimes from Koftoussa into the river. In winter time all the dams are carried away by the water and we fix them again either in April or May. In winter we put water in our channel for irrigation when it is required and whenever we like. In winter there is plenty of water and there are no turns for irrigation and any one who requires water to irrigate he takes as much as he wants. The turns for irrigation start from the 1st of July up to the 1st of October. It is not true that Neophitos Papa Georghiou reported me that I was getting water from the Frantziko dam during the period I was not entitled to. He never reported me in respect of Frantziko. He probably did so in respect of my wife or my mother in regard to Galata. I did not go to Petra in respect of any report against me. I did not pay 5/- as compensation. I do not know whether my wife or mother-in-law paid any compensation in this respect. If I see Loizo Demitriou I may know him. I do not know Loizo Demitriou. I never wrote any letter to him requesting him to settle the report made against me. I do not know that Kakopetria people are entitled to take water from the rise of the Pleiads till sunrise during the summer months. I do not know also that as from the 28th August they are entitled to take water from the rise of Orion till sunrise. Last year my property was irrigated many times during night time but not by myself. This property of mine was always irrigated by my mother-in-law or wife or by a neighbour of mine. I, myself, never went for irrigation purposes at night time. I never went to irrigate my properties at night time. Before the year 1941 my turn for irrigation was both in day time and night time. From the year 1941 onwards I never went for irrigation at night time. My wife, my daughter and my mother-in-law were going for irrigation.

Re-examination.

Re-examination by Mr. Hadji Pavlou :

I am a grocer. This piece of land was not irrigated by the Kapathokas or Vassiliko dams.

At this stage Counsel for the defence applies to recall witness Dzevdet Mirada.

"Leave granted."

No. 32.
 Evidence of Djevdet Mirada (Re-called), 25th June 1948, Examination.

No. 32.

EVIDENCE of Djevdet Mirada (Re-called—Witness for Plaintiffs No. 11).

DJEVDET MIRADA, recalled on the request of the Counsel for the defence, reminded of his oath.

Q. There are three registrations for water in your register Exhibit 13, the oldest being dated in 1894 in Petra. These are numbers 2568, 2569 and 2570 which are included in the register from serial No. 1903-3534 ?—
A. Yes.

Q. Now these three registrations are the oldest ones ?—*A.* No, they are not the oldest, there are previous registrations.

Q. Now, how are these three kotchans described in your register ?—
A. 2568 : running water two hours on every 22 days. No. 2569 : running water two hours and 30 minutes on every 15 days. No. 1570 : running water one hour on every 22 days.

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Q. Now, you said that those registrations are derived from previous registrations ; and all these three kotchans are dated in the year 1894 ?—

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Evidence.*

A. Yes.

Q. You mean to say that the previous registration of 2568 is 2515 ?—

A. Yes.

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Evidence of
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tion,
continued.

10 Q. And registration 2515 is also the description of the water. Please read it, and take no notice of the red ink ?—A. Running through the Karkotis river on every 22 days and from Moulla Moustapha division.

Q. In this description you find that the words on every 22 days are struck out in red ink and another word is substituted which reads " of Troodos " ?—A. Yes.

Q. Now, this word " of Troodos " is not carried to the substitute. I mean in the corresponding registration number. The subscription of the corresponding registration gives no description of the boundaries at all. You find the words " of Troodos " and " on every 22 days " corrected
20 in red ink ?—A. Yes.

Q. And will you explain to Their Honours when this correction was made ?—A. I do not know. Neither the date of the correction nor the reason for which it was effected are inserted in the registrations. (*All items referred to are put in and marked as Exhibits 13 (A), 13 (B) and 13 (C). The corresponding previous registration of Exh. 13 (A) as Exhibit 13 (A) (1) and the previous corresponding registrations of 13 (B) and 13 (C) are respectively marked 13 (B) (1) and 13 (C) (1).*)

Q. Now, what you said in respect of registration Exh. 13 (A) (1) the same applies for Exh. 13 (B) (1) and Exh. 13 (C) (1) ?—A. Yes, but
30 I don't know the date and the reason for these corrections. No. 2515 corresponding number of 2568, No. 2522 corresponding number of 2569 and No. 2541 corresponding number of 2570 are not the original registrations, no date is known, and it may be that they were copied from the Field Book which I presented and which is kept in Turkish. They are all copied from Exhibit No. 2.

Q. When was this Field Book prepared ?—A. Exh. 2 was prepared in 1893.

Q. Now, take two facts, one the reason of granting title Exh. 13 (C) (1) in collating against registration 2541 and the reason for granting this title
40 is stated in your register " to be exchanged No. 313/1883 registered share in his name."

Court (P.D.C.) : This registration 2541, is it taken from the Field Book ?—A. Yes.

Mr. Houry : The Field Book only copies things which were in previous registrations.

Court (P.D.C.) : Was there an older registration prior to the Field Book ?—A. Yes.

Q. So this Field Book, Exh. No. 2, is not the first record in respect of this item ?—A. No.

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Court (P.D.C.): Then Exh. 13 (B) (1) which has as its original registration 2522 and which original registration (2522) was exchange No. 312/83 registered share in his name. To draw also your attention to Exh. 13 (A) (1)—No. 2515—the reason for the granting title is exchange No. 21/1886 January registered share in his name. Now from all these old registrations you come to the conclusion that the words “ of Troodos ” never occurred in the previous records?—A. I don't know, your Honours.

Mr. Houry: I put it to you that the earliest registrations did not include the words “ of Troodos ”?—A. I don't know.

Q. You do not think you can help Their Honours back in 1886, but 10
can you tell if the first copy obtained by the Registry if it is the exact one?—A. I don't know if it is the exact record. The words “ of Troodos ” do not occur in the previous registrations.

Q. Now, this is a certificate of search made by your office (Exh. 14), will you please say if it is correct?—A. It is correct. You may ask the L.R.O. clerk who prepared it.

Q. You see that the newest substituting registration is for a spring. Will you please read it?—A. “ Running water, the whole supply being one wheel-well's spring water—coming to the surface from the spring having its source in the Field belonging to the heirs of Panayiotou Hj 20
Kyriakou, bounded by : Karkoti River, Successor of Haralambos Kyriakos Gavrili Kyriako; Successor of Hj Savva Hj Michaeli; Road and Monopadi.”

Q. That is part of land and further below you read the previous registration of that land?—A. I cannot see here anything to give the previous registration of it.

Q. Now what does it give the previous registration?—A. This is a registration for water but I cannot connect Exhibit 12 with Exhibit 13.

Cross-
examina-
tion.

XX'n by Mr. Clerides :

Q. Will you look at Exh. No. 12. Was this title deed made after 30
local enquiry or not? Can you say?—A. I think it was issued after local enquiry, but I must look it up.

Mr. Clerides : Will you find the file and produce it to the Court?—
A. Yes.

Q. And when a local enquiry is made the local authority verifies the result of the local enquiry both as to the extent and the boundaries?—
A. Yes.

Q. Now find 2568, Exh. No. 13 (A-1). The previous registration of that is 2515?—A. Yes.

Q. Find it please. Now, in this registration which is Exh. No. 13 (A-1), 40
how is the kind of property described?—A. Two hours running water on every 22 days.

Q. The words “ on every 22 days ” are struck out in the red ink?—
A. Yes.

Q. And they are initialled?—A. Yes.

Q. Has that correction been made before the issue of the title deed or after its issue? Was any title deed issued before 2515 and when?—
A. Yes, it must have been issued but no date is given.

Q. Could you say whether this correction "on every 22 days" was made before the issue of the title deed or after it?—A. I cannot say definitely.

Q. In respect of the boundaries, how is the description?—A. Running from Karkotis on every 22 days from the Moula Moustapha division, but the words "on every 22 days" are struck off and the words "of Troodos" are inserted in red ink and initialled.

Q. Now with regard to this registration, you said that a previous registration was existing and you gave its number?—A. Yes, 21st
10 January 1886.

Q. I want to see whether a reference is made in the Field Book in this respect or whether this is the original registration. Can you get a reference showing this registration, 21/1886, or whether these records exist now?—A. No, there is no register showing the registration 21/1886. But this registration is referred to in the Field Book.

Q. Can you tell from your experience how this old registration or how were these records recorded before this Field Book was made? You definitely here see the reference?—A. I understand that there was a previous title deed in respect of 21/1886 but no register exists now showing
20 this registration.

Q. This field book was made, you said, in 1893 and this registration 2515 is referred to in this Field Book (Exhibit 13 (A-2))—the corresponding entries in the Field Book of Exhibits 13 (A) and 13 (A-1) are to be found in the Field Book and marked as Exhibit 13 (A-2)—and in Exhibit 13 (A-2) reference is made of the registration 2515 and reference is also made of the previous registration of 21/1886 as well?—A. Yes.

Q. How are the boundaries of this registration Exhibit 13 (A-2) recorded?—A. The entries in the Field Book are as follows: Running water through Troodos, Karkoti river from Mulla Moustafa division.

Q. You said in your examination-in-chief that these records in
30 Exhibit 13 (A-1) were copied from the Field Book?—A. Yes.

Q. And you see some corrections in red ink and also that these corrections appear in several parts of this book. Will it be possible that when these entries were copied from the Field Book into the register, mistakes were found and corrected in red ink?—A. Yes.

Q. Now do these corrections correspond with the Field Book and, in order to cut the matter short, whatever you said in respect of Exh. 13 (A-1) applies to Exh. 13 (B-1) and Exh. 13 (C-1)?—A. Yes, and there is a record in the Field Book of these registrations and which are marked as
40 Exhibit 13 (B-2) and 13 (C-2) corresponding to Exhibits 13 (B-1) and 13 (C-1), and which I produce.

Q. You see several corrections here with are corrected in red ink?—
A. Yes.

Re-examination by Mr. Houry :

Q. In that Field Book several pages are noted in red ink obviously as being cancelled?—A. Yes.

Q. What does this mean?—A. That no registration was effected.

Q. Now tell me if you know how many there are in this Field Book?—
A. I don't know.

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Mr. Houry : There are 240 pages in all from which 98 are not filled and 142 pages filled from which the 93 pages are cancelled.

(At this stage the Court had an interval of 40 minutes. Time 11.30 hours.)

Resumed : at 12.10 hours.

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Evidence.*

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ation,
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Court (P.D.C.) : Will you please compare Exh. 12 with Exh. 14 in which registration 511 is described to be Field. Also the water under registration No. 2922 is shown coming out from a spring having its source in the Field and not from Karkotis river as given in Exh. 12 by way of reference ?—*A.* Yes, as it is shown.

Q. And which of the registrations is the earliest ?—*A.* No. 511 is the earlier registration. 10

Mr. Clerides : Which is the date of registration No. 2922 ?—*A.* 12th November, 1925.

Q. And Exhibit 12 was issued after local enquiry ?—*A.* Yes, this was produced after local enquiry.

Q. Then Exhibit 12 was issued after local enquiry and at that local enquiry the Mukhtars and the Azas of Kakopetria village gave a certificate ?—*A.* Yes.

Q. And this registration was made on the basis of that certificate ?—*A.* Yes. 20

Q. Will you please produce the certificate of the local authorities of Kakopetria upon which this registration was effected ?—*A.* Yes. (Exhibit 15—certificate of the Mukhtar of the village.)

Mr. Houry : Can I see this certificate, Your Lordships, because I haven't seen it.

Court (P.D.C.) : Yes, of course.

Mr. Houry (after consideration) : There is no objection to this, Your Honours.

Mr. Clerides : There is also a consent of the owners of the property which is verified by the Mukhtar and the Aza of the village. (Exhibit 16.) 30

Mr. Houry : I object because I haven't seen any consent. (After reading consent, *Mr. Houry* objects).

Mr. Clerides : Very well.

Court (P.D.C.) : There is another confirmatory certificate in the same file for the same title.

Q. Could that registration be effected without this consent being issued ?—*A.* No, unless written authority of the consent of the owners of this water which is used for irrigation is given. And it was when the written consent of Michael Antoniou was produced that the registration in the name of Kakopetria could be proceeded. 40

Mr. Clerides : In the file it is proved that this was not registered in their name but only after local enquiry and it was only with that consent that the boundaries were described.

Mr. Houry : I see Your Honours that this certificate is not evidence. It has to be given by a person or a party and it cannot be admitted as evidence. It is just hearsay.

Court (P.D.C.) : It comes as an initiating document about 20 years ago.

Mr. Clerides : And furthermore it is one of the certificates on which the title deed was issued (Exh. 12) and it is on these grounds that Exhibit 16, consent of the owners of the water for irrigation, is admitted.

Case for Defence closed.

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10

No. 33.

PROCEEDINGS AT TRIAL.

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Mr. Clerides : I apply Your Honours under Order 33, rule 7 and rule 9, for leave of Court to call the Registrar of the District Court to produce the file of action No. 375/1897. The reason of my application is this : My submission is that in the interest of justice this file should be produced for two reasons. The predecessors in right of Defendants were Defendants in that action as well and the dispute in that case was the water at the point of Frantziko dam. The Defendants in this case tried to establish by evidence that the river Karkotis is named Karkotis only after the junction below the two bridges at Kakopetria, and secondly they alleged that they have an unrestricted right to have from the above junction, from Frantziko dam and the other dams of the river, any quantity of water and at any time, day or night. Now, in that case my submission is that the predecessors in right of the present Defendants do not dispute that Frantziko dam is in the river Karkotis. So this case will help the Court to decide the rule as to the admissibility of the action because as far as 1907 the predecessors of the right of Defendants never disputed that Frantziko dam is in the river Karkotis or in Ayios Nicolaos. Then the consequent point which is in issue and relevant is this : In that case they agreed that they have the right to take water in the same hours as the Galata people have and they do not claim that they have unrestricted rights, but they agreed that they have the right to take water at the same hours as Galata people. That, as this is the case, is relevant and will immensely help the Court whether the evidence of the Defendants in this case is correct or right or true, or whether the defence is true:

Court (P.D.C.) : The action is between Galata and Kakopetria ?

Mr. Clerides : Yes. It was a dispute between those two villages as to the right of the water and in that dispute they never claimed or they agreed that Frantziko dam is in Karkotis river, and the second point is that they agreed that they are entitled to take water at the same hours as Galata people are entitled to.

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Mr. Houry objects to the production of that case and gives in detail the reason and refers to the case in Volume V, page 82, decided in 1901.

Mr. Clerides dropped his application.

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For Plaintiffs : Mr. J. Clerides with Mr. Indianos.

For Defendants : Mr. M. Houry, Mr. G. Hadji Pavlou and Mr. Tavernaris.

Mr. Houry addresses the Court :

This action was started in the year 1941 before Law 26 of 1945 was brought into force—law about general registration and valuation. That law was brought into force on the 1st September, 1946, Subsidiary Legislation of 1946, page 228. It repealed the old law concerning acquisition of water. Rights of *ab antiquo* use amending 220/34 were repealed by 5th Schedule of that law—repeal effected at section 81. At section 9 of the law it is provided that the period for the acquisition of immovable property shall not exceed 30 years. I lay stress on the proviso of section 9 “provided that the . . . the extension of 30 years.” In view of this section in our respectful view the Court will have to consider the situation for the purpose of this action as it was in the year 1911 or before the year 1911. What in itself comes out of the definition of the immovable property section 2 “Immovable property includes springs, wells . . . of any land.” 10

Well Your Honours will be looking into the law that will have to be applied in this case. There is an order which the Court will look into. It is probably the abandonment of rights.

In the case of *Sadyk v. Papa Michael Yianni*, Volume 6, page 45. There we have it laid down as principle that “as a general rule of law it is clear that rights of irrigation are governed by *ab antiquo* user, but we doubt whether user which had been discontinued for a substantial length of time would be such user as the Law contemplates.” 30

That is an old decision but the principle is again referred to in Volume 12 in the case of *Savvas Hadji Panayi and Others v. Papa Michael Kathomouta*. It repeats the very same principle as laid down in the case of *Sadyk v. Papa Michael Yianni*.

So this principle is a sound block. My learned friend will invite Your Honours to look into the case of *Stavrinos Louca v. Papa Symeo*; this is reported in Volume 5 of the Cyprus Law Reports, page 82. Now that case cannot apply to the facts of this case for the following reasons.

Court : What is the principle in a few words ?

Mr. Houry : The principle is that each village must take by its channel only so much of the water as it is proportionate to the area, irrigable land, belonging to the village. Now that is a case where the use is concurrent and the water is to be distributed when the concurrent user is to irrigate a certain fixed area between the two villages. In that case the Court lays down the principle that the quantity to be taken by each 40

channel should be as much as it is proportionate to the area that is irrigated. It was a case which was brought by Galata against Kakopetria and it is contended that they had simultaneous rights at the same hours to take water for the irrigation of their lands. So one village sued Kakopetria for taking more water and Court laid down this principle. In this case none of the litigants even thought of introducing into the evidence the area of land that was irrigated by the water. So this principle cannot be applicable in any way. Petra did not bring any evidence as to the area which they irrigated. Kakopetria did not bring any definite evidence as to the area irrigated and it cannot be applicable. Petra does not say that we have a right to take this water at the same time as Kakopetria. Our right is that when the time comes we should have the water and Kakopetria must not touch the water. So there is no parallel between the present case and the case which was decided in Volume 5. It will be misleading to draw any analogy between these two cases. Additional reasons why this case should not be applied are that the parties are different and it decides the conditions as they existed in the year 1901 ; in this case Your Honours the parties rely on the rule established by custom or by law so the principle in the case of *Stavros Louca v. Papa Symeos Nicola* cannot be applied.

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Next point which comes for consideration is the meaning of the term "Karkotis." What does the river Karkotis actually signify? It is important to have a decision on this point because some of the title deeds, practically all the title deeds, speak of the river Karkotis. Some give it without qualifying words, some others go as far as to say that the water "running through the river Karkotis from Troodos" so it becomes necessary for the Court to enquire into what the term Karkotis actually means ; now if it is at all in issue—in our respectful view this matter is not in issue at all. I refer to the Statement of Claim, para. 2-4.

30 Para. 1. "The Plaintiffs mentioned . . . and Karkotis."

So paragraph 1 draws a definition between Karvounas, Ayios Nicolas and Karkotis.

Para. 3. "The waters of the rivers Karvounas . . . Kakopetria."

There could not be words more distinct as those to agree with the version that we set ourselves to prove in this case.

It is important Your Honours to remember this : that the trunk of the river Karkotis starts off at the point where the two tributaries meet and the river Karkotis I suppose throws its water into the sea unless it disintegrates somewhere in Messaoria. I have no information but if between that point where Karkotis commences downwards tributaries throw their water into the river Karkotis there is no difficulty at all in saying that the river Karkotis does not start from where the tributaries throw their water into the river but in this case it so happened that the two tributaries are the uppermost tributaries that have been known by distinct names and only on the point of their junction is the trunk of the river Karkotis formed. It will be impossible in view of the pleadings in this case and evidence to find differently than this. That the one rivulet is known as Ayios Nicolas and the other as Karvounas and on the point of their junction downwards the river is formed.

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Para. 4. "By virtue of title deeds, Imperial Firman, Ilams of the Sheri Court, the water of the rivers 'Karvounas' and 'Ayios Nicolaos' and their continuation the river Karkotis belongs to the Plaintiffs and/or the Plaintiffs 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 'Sanidhi tis Evrykhon' at Evrykhon is 7 feet or at the dam and/or at locality Paliomilos at Tembria 5 feet, and/or the dam and/or locality Vrochtos at Tembria 6 feet and/or at the dam and/or locality 'Sanidhi tis Korakou' 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."

As to the firmans we have seen none. Here again the same principle is brought to light. The idea that the river Karkotis extends up to Troodos only is not true according to Plaintiffs. Karkotis starts from where it is formed and when they saw the defence that from these two rivulets Karvounas and Ayios Nicolas Kakopetria can take the water but from where Karkotis is formed below they have no claim on the water, it occurred to the Plaintiffs to smoothen their case by saying that Karkotis comes right from Troodos and this is an afterthought. This is an afterthought and not in issue at all.

In addition to the pleadings we have the very numerous witnesses, who were produced by the defence, that give to the river Karkotis and the two tributaries exactly the same meaning as given to them by the Statement of Claim—exactly the same. The only evidence against this is to be found in the L.R.O. survey map. (*Looking at the map.*) We have Karkotis potamos in Exhibit 1 (B) but it makes no mention whatsoever of Ayios Nicolas river. This comes into direct conflict with the local evidence and local evidence that ought to be the best evidence in the case since it was local evidence brought mainly from Kakopetria village within the boundaries of which Ayios Nicolas river happened to be. This village is the most competent to say what is the name of the river which we call Ayios Nicolas and which the map calls Karkoti.

Then the other bit of evidence was the Kotchan of 1946 which was produced the day before, Wednesday I believe. But we saw that the mention made of Karkotis river is not borne up by the previous registration and the search certificate we produced established the fact. They put in evidence yesterday a certificate of which 1946 Kotchan was issued. The certificate is not evidence, Your Honours, but I would like the Court to visualise the position in case where a person wants to obtain a kotchan after the date of the general survey.

Now there was some evidence, oral evidence on the side of the Plaintiffs to the effect that Karkotis river commences right up to the point of the summit of Troodos, but that evidence is weak, incoherent, unreliable and is not corroborated and is based exclusively on hearsay. There were witnesses who came from distant villages who knew little if anything of local names and here again the Court will have to choose whether the people, the volume of testimony that was brought from

Kakopetria village best qualified the local names of the village or whether the people who came from Petra and deposed that the river Karkotis commences from Troodos, in my humble submission, there can hardly be any choice.

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Plaintiffs' claim is that they have exclusive rights from the rivulets Ayios Nicolas and Karvounas on Saturdays, Sundays, Tuesdays and Wednesdays from the afternoon when the shadow of a man extends to 7 feet up to the rising of the Pleiads from May until 28th August and from the rising of Orion thereafter during these hours they say that the whole
10 quantity of the water belongs to them exclusively. They do not appear anywhere in the Statement of Claim or evidence to contend that the water of the springs that issue from private land from Kakopetria is water to which their rights extend and again their claim seems to be limited though not by the pleadings but by the evidence three months of the year between June and August according to some and between July and September according to other witnesses. These are rights which Plaintiffs claim for themselves. They claim for the defence that the Defendants' rights to the water is from the rise of the Pleiads to sunrise from May until 28th August and from the rising of Orion to sunrise and thereafter
20 during Saturdays, Sundays, Mondays, Wednesdays and Thursdays, while on Friday, I am only speaking of the contention of the Plaintiffs as to what the rights of the Kakopetria people are.

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I will repeat them. The Plaintiffs' claim that the Defendants' rights to the water commences from the rising of the Pleiads to sunrise from May until 28th August and from the rising of Orion up to sunrise thereafter during Saturdays, Sundays, Mondays, Wednesdays and Thursdays, while on Fridays Kakopetria people are said to have a right to take from the rise of the Pleiads until the shadow of a standing man is 7 feet in the morning. Statement of Claim does not mention this specific extension.
30 On Tuesdays, so the Petra people say, Kakopetria takes no water. Paragraph 10 of the Statement of Claim "The Defendants and generally the village of Kakopetria are taking the water of the rivers 'Karvounas' 'Ayios Nicolas' and 'Karkotis.' all the days except Tuesday of each week from the rising of the Pleiads from the beginning of May to the 28th of August and from the rising of Orion during the other period of each year to sunrise."

These are the rights which Petra people say that the Kakopetria people have. What the Defendants themselves claim to be their respective rights. Defendants say that they are entitled to take sufficient water
40 throughout the year at all times to irrigate their lands efficiently from Ayios Nicolas, Frantziko, Karydhi and Apliki dams. The surplus flows into the Karkotis river. The spring water that they say that it is theirs that is what Defendants claim to be their own rights and they claim that the Plaintiffs have the following rights, if any. They do not go as far as the Defendants' rights; all they say is that it is our right and if Plaintiffs have any right it is only for the surplus that falls into the Karkotis river. That is from the pleadings and from the evidence. These are the mutual contentions as regards the mutual rights.

In deciding this case Court will have to introduce into its mind the
50 question on whom this burden of proof lies. This is important, Your

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Honours, because the Plaintiffs would have to prove their rights before they could have judgment. Even if Defendants are merely trespassers Plaintiffs must lose unless they can prove their rights. I have had many cases which were won without proving the rights of the Defendants. The attack centred on the issue that the Plaintiffs had no *ab antiquo* rights and as they could not prove their *ab antiquo* rights they failed in the action. In this case the Court will have to be persuaded about this proposition of law that in order that the Plaintiffs should win they should prove to the satisfaction of the Court that they have rights to the water from Frantziko, Ayios Nicolas, Apliki and Karydhi dams to the exclusion of Kakopetria people during the hours when they say that they are the owners, otherwise they must fail. Now I say, Your Honour, that it is a regrettable feature of the evidence that the origin of this so-called custom of claim of Petra is obscure. The Statement of Claim mentions Firmans, Laws, Turkish documents, etc., which were never produced. So we know nothing about the origin. 10

What is the nature of the evidence that was produced in support of the Plaintiffs? It may be put into the following classes. We have the register, the Kotchans, the field book and the map. Exhibit 5 is the report of Salim Effendi and accompanying plan of Salim Effendi in 1901 and the oral evidence which was adduced by the Plaintiffs. I do not propose in commenting on the oral evidence to comment in detail on the evidence for the defence, I shall only content myself in saying it is marked by the following characteristics. It is coherent, definite, positive, trustworthy and stands uncontradicted. It is voluminous as remote and insignificant as the evidence that was put forward by the Plaintiffs. It establishes beyond any doubt that throughout the living memory extending to over 50 years Kakopetria people took the water throughout all the hours in all days of the week in all months of the year without any restriction or interference from any source, while the evidence adduced by the Plaintiffs is inadequate, uncorroborated and indefinite. It is to be found in the testimony of few water guards coming from distant villages who happened at very disconnected intervals according to their evidence they have gone up, but even if it is to be found that they have gone and diverted the water none of the Kakopetria people happened to be there and if they did it amounts to an act of trespass. Those of the Kakopetria people who are mentioned to have been seen there deny all knowledge. So from the oral evidence put by the Plaintiffs there is nothing at all that can show a break in the continuity of usage of this water by the people of Kakopetria. So I shall invite Your Honours to find as fact that the oral evidence adduced by both sides establishes the following propositions of facts :— 30 40

(A) Kakopetria people irrigate an area of land at Kakopetria.

(B) That area is not capable of being increased and the tendency is that that area will decrease as part of it is devoted to non-agricultural usage.

(D) That that area has of recent years decreased.

(E) That that area has, a large part of it, been converted into orchards in recent years.

(F) That the present use of the water is less than that formerly employed by the Kakopetria people for the irrigation of their lands. 50

(G) That the surplus water allowed to flow into Karkotis must be correspondingly greater.

(H) That the quantity of water entering Frantziko channel is approximately one-sixth of the whole volume of Ayios Nicolas stream ; never, however, more than one-quarter, according to our witnesses.

(I) That the Frantziko water entering through the Frantziko channels and not absorbed for the irrigation is made to flow into Karvounas river and from thence into Karkotis.

10 (J) These circumstances show that even entering the channels of Frantziko when not employed go again into Karkotis to increase the quantity of the water of the Karkotis river.

(K) That the water of about 32 springs issuing from private lands round about Kakopetria flows freely into Ayios Nicolas and Karvounas streams.

20 (L) That the water of these springs is private property of the Kakopetria people. There was no evidence of any sort put on the other side. In fact all the witnesses for the Plaintiffs never claimed that the water or springs is part of the water upon which they lay claim.

(M) That the water of these springs is approximately equal in quantity to the water utilised by Kakopetria.

There are some other positive propositions :

(N) Throughout living memory Kakopetria irrigates its land from Ayios Nicolas and Karvounas stream and they take as much water as the land can absorb.

(O) That the Kakopetria people take the water at all hours of the day and night every day of the week in every month of the year.

30 There are some indicative propositions :

(P) That they never observe the moment of the stars to commence irrigating or sunrise to stop irrigating (I refer to Kakopetria people) or shadow of a man from the light of the sun. If the testimony of the Plaintiffs is to be believed that the hours of irrigating depended on the movement of the stars then in our view Kakopetria will have to go without water until June because the Pleiads according to the evidence are not visible until July.

(Q) That there never was any interference by any person from any other village.

40 (R) That they never distributed water by hour.

This is very important Your Honours. This bit of testimony that Kakopetria distributed water or system of distribution is extremely important. All the evidence is very definite on this point that never in the history we are living Kakopetria distributed water by hour but always by turn.

(S) That Kakopetria people always maintained the channels even up to the Koftousa from which point Petra says that we have the rights and it is Kakopetria that has been spending money for the maintenance and improvement of the channels.

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(T) That Karkotis river starts from the confluence of the two rivulets Ayios Nicolas and Karvounas at Kakopetria downwards.

(U) None of the tributaries from Kakopetria upwards are known by the name Karkotis.

(V) That Kakopetria people are the best qualified to know the local names of rivers or localities.

These are my submissions for the oral evidence.

We come to the documentary evidence and we see that Plaintiffs produced some Kotchans. I would like to remind the Court that in their efforts to produce this species of evidence they would not go farther than the year 1893. That is the earliest period that we have in evidence that the title deeds and kotchans are issued. In fact it is problematic if any water was registered before 1893. From this the Court will have to draw the inference if it is your pleasure to say so that before 1883 there was no law, no custom, that required the registration of water rights and when these water rights began to enter the tapoo register we found nothing that rendered the registration of these rights. Probably some who wanted to secure recognition of the right of ownership sought and obtained registration. The earliest records go back to 1883. 10

Now these earliest records are the best evidence of the sort of rights which Petra people lay claim. Description : " Water running . . . " 20

Now we see this clearly from Exhibits 13 (A), (B) and (C) and 13 (A-1), 13 (B-1) and 13 (C-1) we notice something which is really a misunderstanding. We see that at some period, we do not know when the word Troodos was put in red ink. We do not know when that correction was made, and what is more important we do not know why it was made. So there is nothing at all to enable the Court to know that the correction was properly or improperly made. No local enquiry, no plans, no specification, nothing at all to indicate what in reality it denotes.

Now in our view the earliest records lend complete support to the contention of the defence in this case, very, very far from contradicted. 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. 30

Now the subsequent kotchan reveals an amazing mass of contradictions, extensions and contractions which we propose to read to Your Honours.

Kotchan dated 1940 that is 9524 Exhibit 8 (1) gives the description running through the Karkotis river from Troodos. Exhibit 8 (2) Kotchan 807 running through Karkotis river having its source from the spring of Troodos. No bit of evidence as regards any springs in Troodos simply from the springs of Troodos. 40

Then Kotchan 8211 " running through Kanli Daga Karkoti river every 22 days." Kotchan 7226 30th November " running from the river Karkotis from Troodos." Kotchan 8648 dated 28th November " running through Karkotis river of Troodos " not from Troodos but of Troodos. 9160 dated 29th October 1937 " running of the Karkotis river and called

Louka Nebeti." Kotchan 8019 "running from the Musulman Selesi Division." 8932 30th December, 1935, "running through Karkotis river." 9159 of 29th October, 1937, "running through Karkotis river." 8436 dated 24th December 1929 "running through Karkotis river having its source from the spring (again singular) of Troodos." 8557 dated 21st July, 1930, "running through Karkotis river." 5345 of 4th April, 1946, "running from Karkotis river called Musulman Selesi Nevbeti."

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10 You will hardly see one description that can agree with any other description, and yet my learned friend will invite you to infer that from these various contradictions and contractions that the Petra people own the water from the water that was coming from Troodos.

It was impossible for the Land Registry to give to Your Honours any intelligent statement. They produced no local enquiry as I have already submitted. My allegation would be this. If the Land Registry Office could not explain why Troodos was inserted, if the Land Registry could not explain these variations in the Kotchan, after all it is their own documents, what they could not do would be, of course, a question which Your Honours will have to answer. In dealing with these documents produced by the Land Registry I would like certain dates to be always 20 remembered. The field book which is supposed to have been made in 1893. The earliest kotchan that was produced was in 1894, though entries in 1894 refer to 1883-1886 entries. It is still fresh in the minds of Your Honours. If the hypothesis is to be believed that the entries in the tapoo register were taken from the field book, we must assume that the field book was already in existence. It was in existence when the entries of 1894 were made and yet we know from the evidence of the Land Registry that they have to rely on the field books. The only source of authority is to translate the entries from the field book into the tapoo registers. This is stated clearly by the Land Registry clerk. We need not hear 30 the Land Registry clerk about this because the tapoo register itself states the reason for granting the title. There is a specific column that mentions the reasons for granting of the title and we see that 1894 entries relied exclusively not on any field book but it relied on an old register. Never did tapoo register reveal that the reason for granting a title was the existence of the data supplied by the field book. Now of course upon this field book I shall ask the Court not to give the slightest significance. It is not a record made upon which the Land Registry themselves relied; if the Land Registry Office cannot rely on the field book could Court rely on the field book?

40 Then the amazing thing about this field book is that it contains as many as 240 pages out of which only 142 were filled, and out of 142 pages filled 93 pages of these pages were cancelled. In our respectful view this field book should be rejected. About the maps I have already spoken and I will not repeat all what I have already stated.

Another bit of evidence which the Court will have to consider is the report of Salim Effendi with his accompanying plan, that is Exhibit 5. Now that report will at once strike us as not revealing the source of information that was supplied to Salim Effendi, the information or evidence on which he relied for that purpose. Was the report made as public 50 document or was it a kind of confidential report that was supplied too

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by Salim Effendi in response to a request made to him by his chief? I think it is clear enough that it is in respect of a request made to him by his chief. He opens the report by saying "In compliance with your instruction respecting the enquiries to be made to the taxim of the" It is clear from the report that it was made on the request of his chief. The request apparently came from the then Director of Surveys, A. Young, in Exhibit 4, but it does not appear to have been addressed to Salim Effendi unless I am very much mistaken. The request contained nothing about Kakopetria dams which we are enquiring into to-day.

Mr. Clerides : The Director of Surveys could not give instructions 10
to be carried out after seven years.

Mr. Houry : I have not got any other thing than this. But it is clear that it was done in response to a request. That is what has to be said about this report.

The source of information does not appear anywhere in the report. He does not seem to have enquired for the Kakopetria rights on the spot at Kakopetria and what is amazing about it is that during the period when he is supposed to have made the report Kakopetria people were freely using the water, in the way which they are using it to-day. His plan which accompanies his report does not give the names of Ayios Nicolas 20
and Karvounas and it seems that these two names must have been unknown to Salim Effendi. While I am dealing with this question I would like to read some decisions which will have a bearing on the kind of importance that Your Honours might like to attach on these documents. *Cockle's Cases and Statutes on Evidence.* Before I start reading, if I remember correctly these documents were not accepted by the Court on the principle laid down by our evidence law but because the Court thought them to be public documents if I remember correctly. If I am right they were not admitted under section 4, sub-section (2), of our law.

Court : Both grounds were included. 30

Mr. Houry : But under our law these documents could not have been admitted because if they were to be admitted they could be admitted under section 4, sub-section (2), that lays down, ". . ."

If their admission is to be justified it can be justified by treating them as being public documents. Now public documents as I have said we have some decision which may be of use to Your Honours in deciding the measure of importance that might have to be attached to this. *Sturla v. Freccia*, House of Lords, 1880 (page 234): "Entries or statements in 'public documents' such as official books, . . ."

The principle obtained in these statements would necessarily make 40
Your Honours reject the report of Salim Effendi and his plan. They were not public documents in the sense they were prepared. They were not prepared under any law of regulation requiring him to do them. There is nothing to say that they were open to the public or anything and Your Honours should lend no significance of any sort. Finally I have to say a few words about the interference complained of. Plaintiffs claim that the Defendants 1, 2, 3 and 4 interfered on the 27th May and claimed that the Defendants 5-6 interfered on the 28th May, 1941, para. 8 of the Statement of Claim. Para. 9 of the Statement of Claim is not intelligible. The

evidence is in direct contradiction to this statement. The evidence shows that the water has always been running in the Karkotis river, that the Kakopetria people never took anything more than they were entitled to and the maximum being according to the evidence one-sixth or one-fourth and that water flowing from Frantziko and was not used was again thrown back into the Karkotis river.

As regards the damage I am not going to elaborate much on that except to say that no damage has been properly pleaded. No particulars and nothing has been proved. No damage of any sort has been proved.
 10 Even if Your Honours will find that Petra people have any rights on the dams subject-matter of these actions which of course we deny then I shall invite Your Honours that those rights were abandoned for more than 50 years and therefore they cannot enforce them to-day.

Short break.

11.30 *Resumed.*

Mr. Clerides addresses the Court :

Your Honours have been referred by my learned friend to law 26 of 1945, and he said that in considering this case what you will have to consider is what was the actual position in 1911, 30 years before the
 20 institution of the action, and invited Your Honours to rely on the evidence adduced by the defence and decide that whatever the rights of the Plaintiffs were with regard to this question they have been abandoned for the last 30 years of the action and therefore the Plaintiffs have lost any rights if they had any. I respectfully submit that this is not the correct view to be taken in this case and Your Honours will have to consider the whole evidence as it has been adduced both for Plaintiffs and Defendants and decide which party's witnesses have told Your Honours the truth. I quite agree that even under the repealed law which provided that rights
 30 of water can be acquired by *ab antiquo* usage if these rights are not continuing without interruption rather serious interruption right up to the institution of the action they cannot be considered as rights continuing *ab antiquo* and therefore the principle laid down in the case of *Sadyk v. Yianni* and confirmed in Volume 12 of the Cyprus Law Reports, page 2, is correct in this case. The Defendants never admitted that the Defendants had any right to divert any water from the dams within Kakopetria area and particularly from the dams of Frantziko, Ayios Nicolas, two Karydhi dams and Apliki. Their stand is this: that all along the inhabitants of Kakopetria had the right to take water whenever they liked and whatever quantity of water their properties required independently of the villages
 40 below which were entitled only to the surplus. The claim of the Plaintiffs is this: That the Kakopetria people have certain rights over this water during fixed hours and after those fixed hours the water should be allowed to flow down the river and to be used by the other villages and by the Plaintiffs at the hours, at the fixed hours, they state in their Statement of Claim.

One of the questions of facts which is raised by the defence is this: With regard to the question whether the river Karkotis starts from the junction of the two rivulets, that is Ayios Nicolas and Karvounas, below the bridges at the end of Kakopetria village, my learned friend

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misconstrued the Statement of Claim in this case. In the Statement of Claim the Plaintiffs allege, para. 1, " that they are owners of fields irrigable from the waters of the rivers ' Karvounas,' ' Ayios Nicolas ' and ' Karkotis.' " The Plaintiffs state in actual fact that there are two rivulets Karvounas and Ayios Nicolaos which join and they are called Karkotis but in no way do they admit that the river Karvounas and Ayios Nicolaos are not Karkotis themselves. In paragraph 3 of the Statement of Claim they state : " The waters of the rivers Karvounas and Ayios Nicolaos are joined near the village Kakopetria and form the river Karkotis " the water forms the river Karkotis. The Statement of Claim does not admit that from the junction of the waters of the two rivulets downwards the river is called Karkotis. On the contrary they say the waters of the rivers Karvounas, Ayios Nicolaos are joined near the village Kakopetria and form the river Karkotis. " The water of which passes through several dams the principal ones being the dams ' Ayios Nicolaos ' ' Frantziko ' and ' Karidia ' all situate at or in the vicinity of the village Kakopetria." So what they say in effect is this. They say there are these streams ; the one is called stream of Karvounas and stream of Ayios Nicolaos the other. They unite and they form the river Karkotis. That is, the whole is river Karkotis and they then come back and say the water of Karkotis passes through several dams, the principal ones being the dams of Ayios Nicolaos, Frantziko and Karydia. In effect they say that the place where Frantziko dam is and Ayios Nicolas is, is Karkotis. So the Statement of Claim in no way admits that it is after the junction of the rivers the river is called Karkotis. The whole river is Karkotis and it has tributaries with separate names, but the whole river is Karkotis and they speak about the water which is running in the stream of Karvounas and stream of Ayios Nicolas and the whole stream is called river Karkotis.

Now it is in evidence that the waters of these two rivulets join and Karkotis main starts from that place because there are no streams from there. Whatever water comes it is from the boundaries and join there and forms the river Karkotis. That that is so Your Honours and that that was the position it is clear from the official documents. My learned friend submitted to Your Honours that the best people to know about the names of the localities and the names of the rivers are the villagers of Kakopetria within the area of which these streams are, but if it is to the interests of the Defendants to say that we admit that the Plaintiffs and the other villages below have the right to irrigate but they have the right to irrigate from Karkotis, and it is to their interests to come forward and say that the river Karkotis starts from below Kakopetria, therefore whatever water exists above the junction of the two rivulets they have no right to irrigate and we have the exclusive right to utilise whatever quantity of water we require and whatever time without any interference from anybody else. But if the contention of my learned friend is correct in view of the evidence of the witnesses which he called before Your Honours there is at least before Your Honours the number of people of Kakopetria in whose evidence a lot of discrepancies can be found. We have here 5 people of Kakopetria who applied for the registration of the water of a certain spring which spring is above the junction and they say about their spring in order to fill the boundaries " potamos Karkotis etc." and they said this at the time they had no interest as to what is the name of that river. They themselves come and say that that river which is above the

junction is river Karkotis and that certificate is certified by the village authorities, by the mukhtar and the 4 Azas. So you have people of Kakopetria calling that river above the junction Karkotis.

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On the strength of this title deed, Exhibit 12, issued in 1925 in which it is described Karkotis river, my learned friend sought to refute this actual fact by producing Exhibit 14 in which the field on which this water is found is registered with boundaries as river and not river Karkotis. That does not help them in any way. At the time the title deed was issued there was a description of the boundaries and they when saying river
10 either Ayios Nicolaos or Karvouna, they meant Karkotis river and Kakopetria people themselves called it Karkotis river.

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Court: It is usual as a matter of fact to give the names of rivers such as for instance we say road and we do not say road of Troodos?

Mr. Clerides: But if it was river Ayios Nicolaos and not Karkotis they would not have placed it as boundaries river Karkotis. And we have the survey map which is the official document and it will be seen in the survey map, which is Exhibit 1 (B), the river described there as river Karkotis from above Ayios Nicolaos downwards even above the place where Kokinorotsos river joins the main stream. In that plan you will
20 see the rivulet Kokinorotsos marked Kokinorotsos and even above that you will see the name of Karkotis river in the plan which indicates that Karkotis river which passes through Ayios Nicolaos which is the main stream and there is evidence that the main stream of Karkotis passing through Ayios Nicolaos that that part is called Karkotis.

The Defendants in order to justify their arbitrary action they maintained this: We have springs in our lands and the water of these springs falls into the river between Frantziko downwards and we are taking from Frantziko so much water as actually our springs throw, we do not take more. We do not claim the water of their springs. If any
30 water comes from private springs and falls into the river that is a public river that we claim the rights; if they like to tap the water of their private springs and utilise it exclusively and not allow a drop of it to fall in the river, we are not concerned, but all we are concerned is this, whatever water is running in the river Karkotis from its source on the mountain of Troodos downwards we are entitled to utilise it in the hours which we are entitled to use under *ab antiquo* usage and we say that our *ab antiquo* usage is to get the water for four days, Saturdays, Sundays, Tuesdays and Wednesdays, from the time when the shadow of a man is at the sanidhi of Evrykhon and Korakou 7 feet or if we take it at Paliomylos which is
40 further up we are entitled to take it when the shadow of a man is 5 feet and if we take it at Vrokhos we are entitled to take it when the shadow of a man is 6 feet. And we are entitled to get not only the surplus water if other people irrigate above us we are entitled to the whole water that runs from Troodos downwards.

Plaintiffs are registered owners of this water. A number of title deeds belonging to the Plaintiffs have been produced and they invariably describe their right as a right to so many hours of water running through Karkotis river from Troodos or of Troodos or from the source of Troodos. Now it appears from the evidence that previous to the compilation of the field
50 book there were some people of Petra having registration with regard to

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this water. Unfortunately these title deeds and old register do not exist to see how that water was described in the old title deeds but we have it in evidence that in 1893 on the strength of a law which was published there was a general sort of survey for the purpose of valuation and taxation and it was made in Petra as well in 1893 and the field book, Exhibit 2, was compiled at the time by Land Registry Officials and it served as a basis for the issuing of title deeds. The whole book refers to the water rights of the people of Petra and it is in evidence that at the beginning after the compilation of that book whenever any owner of water wanted to get a title for his water they used to give him a title deed. On this basis the field book was recorded in the tapoo register which is Exhibit 7 and there the thing was checked and the title deed issued. That was the practice for a few years but after that anybody who applied for the registration a local enquiry had to be made but originally the basis of the issuing of the title deed was simply the field book itself. 10

We have it that the registration of this water was copied from the Field Book. In the Field Book the water is described as "running water of 30 minutes on every 22 days from the Djami Nevbetti Division running through Karkotis river of Troodos." Now the quantity and the division are not material in this case, whether it is 30 or 40 minutes that is one record of the field book, but what we should see is that in 1893 the properties were described as water running through Karkotis river of Troodos. Now in this field book there are various entries and the tapoo register and it appears that when it was copied it was not copied correctly. For instance, Your Honours will see that in the description in respect of the quantity of the water they put it they say in the boundaries "22 minutes or one hour running water," when the official saw this he ordered its correction in red ink and whatever was in the boundaries as to the quantity of water he transferred it, he erased it with red ink and transferred it into the proper column. As in some cases the whole description of the boundaries as it was in the field book was not inserted in the boundaries, the proper official had it corrected in red ink. So this correction about which so much has been said, in my humble submission, does not change the situation at all. Nor is the position changed by the fact that in one title or two title deeds in addition to the description of water as running through Karkotis river from Troodos there is a further addition that it is Turkish turn or Greek turn and so on. The evidence of the Plaintiffs of 12 witnesses of the Plaintiffs is this: That the registered owners of water for Petra are entitled to use the water at the hours I said and they are entitled to use that water for these fixed hours to use the whole water of the river and they further state definitely what are the rights of the Kakopetria people; all of them are unanimous on this, that the people of Kakopetria are entitled to get water from certain dams, that is from Frantziko, from the two Karydhia dams and from Apliki of course Ayios Nicolas monastery from the dam of Ayios Nicolas, but only from the rising of the Pleiads up to sunrise and after the 15th August or 28th August with the new style calendar from the rising of Orion that is their own right and they are unanimous in this case that in order to guard this water not only the water guards of Petra but the water guards of the other villages were also watching these dams and when their turn came they diverted the water from the Koftousa to the river in order to go to the other villages to be used in accordance with their ancient usage. The 40 50

water guards themselves came forward not only the water guards from Petra but the water guards of other villages were called who testified as to the rights of Petra people and as to the rights of Kakopetria people and they mentioned the names of certain persons of Kakopetria people who had seen them doing this work and they mentioned about a certain Yiannis Papa Antoni an old man ex-mukhtar living in Kakopetria and who for several years has been a water guard for the Kakopetria people and for several years has been the water guard for Petra and other villages. We did not bring this man because we could not bring him as our own

10 witness because he is a Kakopetria man and if they had chosen to bring him we would have cross-examined him as to certain circumstances. Their contention is this. The whole of their evidence, the whole of the evidence of the Defendants amounts to this: that the people of Kakopetria are entitled and have been using water uninterruptedly without seeing any water guard from any other village whenever they liked and whatever quantity their fields needed. If the matter stayed at that Your Honours have to choose whom to believe, whether Your Honours will believe the Defendants or whether Your Honours will believe the Plaintiffs. There is an enquiry made by the Land Registry Office as to what was the position

20 at least in 1901 and we have Mehmet Salim, an experienced Land Registry clerk, who on the instructions of the director of Land Registry and Surveys proceeded to the spot and made enquiries, prepared a plan which is very useful in this case and made a report. It states in his report in addressing his report to the Director of Land Registry and Surveys he says that: "In compliance with your instructions to enquire into the taxims of the water of Petra I have prepared this plan and report and I have a reference to this plan." Now in order to enquire into the taxim of Petra he had to enquire into the whole question and prepare a plan of the whole water of the whole Karkotis river and all the rights of irrigation. He put in

30 the plan all the dams existing at the time and all the channels and proceeded in his reference to say at what time and hour and who was entitled to get the water. Now surely Your Honours this man is dead, but in order to make that plain in order to place in that plan all the dams, and all the channels he must have gone to the spot and made full enquiry of the land. In that reference he deals with the channels one by one. He does not mention Ayios Nicolas dam because that was the question of irrigation of a small extent of properties of the monastery of Ayios Nicolas and he starts with Frantziko which is interesting to us in this case. It speaks about the first dam as follows:

40 "No. 1 represents the dam of the channel called Frantziko through which the people of Kakopetria take their water every day except Tuesday. They take their water from the Karkotis river." That indicates that even Salim at the time placed Frantziko dam in Karkotis river and conveyed from the aforesaid channel by blocking up the river with branches and stones so much as the channel can carry. The people of Kakopetria take their water on Saturday, Sunday, Monday and Wednesday and Thursday from the appearance in the village of the Pleiads till the sunrise and on Friday from the appearance of the Pleiads until the shadow of a standing man will approach 7 feet in the morning from the spot of standing

50 to the shadow of his head. They continue to take their water in the aforesaid dam from the 14th June to 14th August and from 15th August to the 13th June of the following year they commence to take their water from the appearance of Orion.

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“ No. 2 represents the dam from which the people of Kakopetria take the water from Garilli river and convey through the channel called Perdhorio when the time comes to take their water they block up the river with brushwood and stone, the overflow of this dam goes to the channel called Befkari No. 3 and these channels No. 2 and 3 take their water exactly the same time as Frantziko channel.”

“ No. 4 represents the dam of the channel called Aplitchi of Ayios Nicolaos.” Here it must not confuse Your Honours. Apliki is property of Ayios Nicolas monastery and Apliki is called the place where New Kakopetria is now. It belonged to Ayios Nicolas monastery and it was 10 sold to Kakopetria people and this has nothing to do with the dam of Ayios Nicolaos which is the other river which is above Frantziko the river of Ayios Nicolas which is on the other tributary. This dam, No. 4, takes the water exactly the same time as the above-mentioned channel that is 1, 2 and 3.

No. 5 represents the dam of the channel called Kapathokas of Galata village.

No. 6 represents the dam of the channel called Vassiliko of Galata village.

No. 7 represents the dam of the channel called Ganoz of Galata 20 village.

No. 8 represents the dam of channel called Makri of Galata village.

No. 9 represents the dam of the channel called Sina Oros which takes the water at the exact time as the aforesaid channels.

So it is evident and it supports my cross-examination that the people of Kakopetria, Galata and Sina Oros take their water at the same hours. Six of the nine channels are in the main stream which runs from Ayios Nicolas downwards and the other three in the other tributaries and these six are the channels in dispute. In the case reported in volume 5 of the Cyprus Law Reports to which I want to refer Your Honours for the 30 purpose of the facts of the case. I do not want Your Honours as I have not been able to whole file in evidence I do not want Your Honours to be influenced by the facts as put in that case, and I respectfully submit that in weighing the evidence of the witnesses of the Plaintiffs and the Defendants, all the witnesses of the Defendants, you will see that this report, this detailed report which was made in 1901 exactly coincides with the evidence given by the Plaintiffs in this case. It proceeds further to speak about the lower dams and I am not going to read the whole lot of it, but I will stop at the place where the rights of the Plaintiffs are set down. 40

No. 10 represents the dam of the channel called Mirasha through which the water of Evrykhon, Tembria and Korakou runs and at the spot No. 11 the water is divided into two, one half goes to Evrykhon and the other half goes to Tembria and Korakou villages.

No. 12 represents the dam of the channel of Evrykhon.

No. 13 represents the sluice on Evrykhon channel from which the water of Petra and Elia is taken.

No. 14 represents the spot where the water is divided and one-third goes to Tembria and two-thirds goes to Korakou villages.

And at the sunrise the dams of the four channels are opened and lead the whole water running down the Mirasha channel. At the rising of the Pleiads there is an overflow surplus of water which goes down and is utilised by Evrykhon, Korakou and Tembria at sunrise in accordance with this report, the whole of the water of the nine dams Frantziko and so on will have to be diverted into the river and the whole should run on sunrise in the river and the river bed to be used by Evrykhon, Korakou and Tembria. Then it goes further. The water of the two sluices No. 13 and 14 unites and run to Petra village through the channels which will
 10 be given further down.

It proceeds further. The people of Tembria take their water every day but in addition to their water on Friday afternoon when the shadow of a standing man falls before him 7 feet from the spot standing up to the shadow of his head then the water of Korakou is also taken by the people of Tembria—until Saturday afternoon at 7 feet of the shadow, i.e., up to the time when the people of Petra take the water.

Then it speaks about the people of Evrykhon and further goes on to speak about the people of Petra taking their water when the shadow of a man is 7 feet and then they continue to have water up to the rising of
 20 the, etc., etc.

The people of Flassou take their water in the aforesaid days from the appearance of the star under Pleiads up to the shadow, in the afternoon, of a standing man falling before him 18 feet from the spot standing up to the shadow of his head, but as the main water of Petra and Elia is taken from the sluice of Evrykhon, Tembria and Korakou at 7 feet shadow p.m. it reaches to the sluice No. 17A and so on.

This report strongly corroborates the evidence of the Plaintiffs who practically agree in their evidence with this report and further state that all along they had water guards who guarded the water during six hours
 30 during which the villages below Kakopetria and Galata were interested not to interfere with it and they kept going on like that up to 1941 at which time admittedly the Defendants sought to interfere with the rights of the other villages and prevented the Plaintiffs from taking any water and as a matter of fact they threatened them that they should not go up in these dams because they had no right and they had no alternative than to bring this action. The Plaintiffs in their Statement of Claim, para. 9, state that since 1941 they have not taken a single drop of water from these four dams because they were not allowed to go and divert the water and people of Kakopetria were taking the water whenever they liked
 40 and whatever quantity they liked.

Now in considering the evidence of the Defendants I should like to point out this fact. They have certain rights in the water of the river Karkotis for irrigation purposes. They know that some 10 other villages have rights as well and they say we do not know about the rights of the other villages. I submit it is unbelievable that a witness of Kakopetria would not know what were the rights of Galata people or of the other villages. The effect of their evidence is this. Well we, the uppermost village, the water runs through our village, we must take whatever quantity we want and let all the other people get the surplus. As a matter of fact,

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one witness Makri admitted and in his own expression he said, "are we going to allow the water to run under our nose without taking it." They say the water passes through our village we must take it. After all, we have a number of springs in our private lands which overflow and run into the river, but whatever quantity we take is the quantity flowing into the river from our springs, therefore we must have all the water we require. It is impossible to believe that this river, which is, as a matter of fact, the biggest stream of water in Cyprus used for irrigation, to have been from ancient times utilised in such a way as to give Kakopetria people the absolute right to take whatever quantity of water they liked. 10

One important thing is this. The report of Salim says that Galata and Sina Oros have the same rights and are taking the water on the same hours as Kakopetria people. My learned friend asked Your Honours to believe entirely the witnesses for the defence and Kakopetria people said we do not know what are Galata people's right or whether they are the same with the Defendants. At least one of the witnesses of the Defendants admitted that he had property which was irrigated from the channel of Galata but he was not willing to tell the truth as to the rights of Galata people in order not to commit himself. Further, Your Honours, Vassiliko channel one of the witnesses passes from the asphalt every day and they 20 say that Vassiliko channel is where Kakopetria and Galata are joined and although the two main channels of Galata are within the area of Kakopetria none of them appeared to know what are the rights of Galata people because they were afraid of this. That if they spoke about the rights of Galata people they might commit themselves to the conclusion that they have the same rights as Galata people. As a matter of fact, one witness of the defence who came from Galata could not deny that Galata people are taking their water from the rising of the Pleiads up to sunrise and after the 28th August from the rising of Orion.

In my humble submission the evidence of the Plaintiffs is corroborated 30 in all particulars and in all the data of documentary evidence and title deeds which give them the right to the water which is coming through Karkotis river from Troodos. This ancient usage I submit has been established as being a continuous one up to 1941 and therefore the Plaintiffs are entitled to the injunction. I did not insist on damages because unfortunately we did not give particulars, but it is in evidence that the Plaintiffs suffered damages and Your Honours might infer that the Plaintiffs have suffered damages. Having not been allowed to take any quantity of water from the four dams of Kakopetria I cannot having not given particulars I cannot claim any damages. 40

Court : Judgment reserved.

(Sgd.) M. ZEKIA,
P.D.C.

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Plaintiffs in this case seek for an injunction restraining the Defendants, their agents and servants from interfering with the water or Plaintiffs' rights to take or irrigate their lands from the water of or running through the rivers Karvounas, Ayios Nicolaos and Karkotis and/or with the dams of 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
10 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 "Sanidhi tis Evrykhou" is 7 feet.

At the dam locality "Vrokhos" at Tembria 6 feet and/or at the dam and at the locality "Sanidhi tis Korakou" 7 feet; to the rising of the Pleiads from the beginning of May to 28th August and to the rising of the Orion from the 28th August to the beginning of May each year. Plaintiffs claim also £700 damages for the loss and injury caused to the Plaintiffs by the Defendants' unlawful interference with their water or their right of irrigation and legal interest and costs of the action.

20 The Plaintiffs based their claims on registration, on *ab antiquo* user, custom and prescription. By article 4 of the Statement of Claim Plaintiffs also asserted that by virtue of title deeds, Imperial Firmans, Ilams of Sheri Court the water of the rivers Karvounas and Ayios Nicolaos and their continuation the river Karkotis belongs to the Plaintiffs, or that Plaintiffs are entitled to take for irrigation from the water of such rivers.

The acts of interference with the alleged rights of the Plaintiffs and generally the cause of action are described in paragraphs 7, 8 and 9 of the Statement of Claim which paragraphs run as follows:

30 "7. On the 27th and 28th May, 1941, the Plaintiffs watermen Michael Anastasi and Polis Tsingis, and Ilarion Ioannou and Polis Tsingis respectively 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 27.5.41 the Defendants 1, 2, 3 and 4 and on the 28.5.41 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 or their co-villagers gardens or other properties.

40 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.

9. 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'

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'Karidhia' and 'Apliki' and their gardens, trees and fields owing to non-irrigation have been irreparably damaged and/or practically destroyed. The minimum damage caused to the Plaintiffs' properties each day they are deprived of the water is £10.0.0."

Defendants on the other hand by paragraph 7 of the Statement of Defence admit the acts of interference complained of but they contend that they use only part of the water of the rivers flowing above Kakopetria and the surplus falls into the river which runs below Kakopetria in which there is always water available for the lower villages including Plaintiffs; and in the corresponding paragraphs of the Statement of Defence 7, 8 10 and 9 Defendants reply to the Plaintiffs regarding the alleged acts of interference by the former. The standpoint of the Defendants might be summarised in the following few lines :

1. Plaintiffs are entitled to make use only of Karkotis river.
2. That Karkotis starts only from the two bridges in Kakopetria and flows downwards.
3. That Plaintiffs had nothing to do with the dams or volume of water running in the rivers above the two bridges in Kakopetria and that Kakopetria people have got *ab antiquo* right to irrigate the lands at any time of the day and each day of the week and they could take the required quantity of water to irrigate their lands (without any limitation) from the water running in the rivers and channels above the said two bridges. (What I gather from the defence, Defendants admit some water rights limiting their own waters running above the said two bridges in favour of Galata and other villages but they contend this has nothing to do with Petra case.) 20
4. That there are a number of private springs belonging to Kakopetria inhabitants falling into the rivers of Ayios Nicolas and Karvounas and that Kakopetria people in irrigating their lands hardly use any quantity of water from these rivers over and above the quantity added to the water of these rivers from these springs. 30
5. That if there are any title deeds, Imperial firmans, or Ilams of the Sheri Court supporting the claim of the Plaintiffs, these should be read as relating only to the water flowing in the river below the two bridges subject to the rights of the Kakopetria people described in (3) above.

By counter-claim Defendants claim the title deeds, Imperial Firmans and Ilams, if any, in the hands of the Plaintiffs to be set aside or amended in such a way as to agree with their alleged rights. 40

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

10 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.

20 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.

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

Corroborative Evidence :

The three survey maps marked Exhibit 1 (A), (B) and (C) in this case corroborate the evidence of the Plaintiffs' witnesses that the river Karkotis or Kariotis extends above the two bridges in Kakopetria towards Troodos. The area from Kakopetria up to Troodos is covered by these 3 plans.

30 These are official copies of plans taken from survey department originals of which were prepared when the general survey was carried out in Kakopetria. It is evident from these plans that the river beyond the two bridges of Kakopetria towards Troodos passing by Ayios Nicolaos Monastery is described as Kariotis river.

The significance in finding the extent of this river lies in the fact that Plaintiffs' rights of water according to their title deeds and other documents relate to Karkotis or Kariotis river coming from Troodos or of Troodos and it is of paramount importance to find from what point this river starts and flows inasmuch as Frantziko and other dams above Kakopetria village

40 which have been admittedly interfered with by Kakopetria people lie in the rivers running above Kakopetria. The fact that the river above Kakopetria was called Kariotis is supported also by the Exhibit No. 6 which was prepared by surveyor M. Salim in August, 1901. This is a sketch but it has been so well prepared that it sheds light to many points arising in this case. The name Kariotis is given to the main river throughout and this river under same name evidently extends to the portion above Kakopetria as there appears no other name for that part of the river in the sketch. Yet when we read the "Reference" attached to this sketch and for instance the reference given for Frantziko dam No. 1

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which is situated in the river above Kakopetria it leaves no doubt that the river above Kakopetria is denominated as Kariotis. We read from page 1 from the reference attached to Exhibit No. 5 (p. 265) :

“ No. 1. Represents the dam or the channel called Frantziko through which the people of Kakopetria take their water every day except Tuesday. They take their water from the Karioti river and convey through the aforesaid channels . . . ”

We refer also to Exhibits No. 14, 15 and 16. These exhibits relate to the transaction which took place in 1925 in connection with the sale of a spring belonging to the heirs of Panayiotou Hadji Kyriacou of Kakopetria which spring is situated by the river above Kakopetria at the locality “ Vateri.” The Kakopetria Irrigation Committee or Kakopetria village bought this spring and in order to obtain the necessary registration certificates were prepared at a local enquiry held, Exhibit No. 14 is the search, Exhibit 12 is the title deed and Exhibits 15 and 16 are certificates of the mukhtar and azas of the village of Kakopetria. In these certificates the spring sold to the village authorities has as boundaries “ Kariotis river ” and these facts lend support to the contention of the Plaintiffs that Karkotis extends beyond Kakopetria towards Troodos because admittedly locality “ Vateri ” lies above Kakopetria and close to the river the name of which caused such a fuss throughout the case. The oral evidence adduced by Plaintiffs corroborated by the exhibits we have referred to, establishes the facts that the river described by Defendants as Ayios Nicolaos which is above Kakopetria and even its continuation to Troodos was called at any rate, when the surveys and the registration of the water rights of Petra were effected, “ Karkotis ” river. It is possible that locally and in recent years this name was used only for portion of the river below the two bridges in Kakopetria. When we read the title deeds in the name of the Plaintiffs and some of which in a bundle as exhibit No. 8 are before us it leaves no doubt that the right of water or that the water to which Petra people are entitled is the one flowing in the Karkotis river which includes portion of the river called Ayios Nicolaos and also includes the water running in the river Karvounas as being a tributary to Karkotis river.

In other words, Petra people are entitled to the original volume of water running in the river above Kakopetria and when making use of their turn they are entitled to conduct all water available in the dams above Kakopetria for their irrigable lands and their rights of water is not limited to the surplus of the water which would have been left to fall in the river after Kakopetria people had irrigated their gardens.

The descriptions of the running water registered in the names of the Petra men and also the descriptions of the same water in Exhibit No. 2, the field book, and Exhibit No. 3, the register, are quite consistent with this finding of the Court. The description given is not identical everywhere but it is similar. We give some of the descriptions.

In Exhibit No. 8 (2) “ Running through Karkotis river having its source from the spring of Troodos.” 8 (3) “ Running through from ‘ Karli Daga ’ Karkotis river on every 22 days.” In Exhibit 8 (4) “ Running from Karkoti river of Troodos.” “ Running through Karkoti

river of Troodos." "Running through Karkoti river." In Exhibit 8 (10) "Running through Karkoti river having its source from the spring of Troodos." In 8 (7) "Running through 'Karpa' river of Troodos from the Mussulman Salesi Division."

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In the first three entries made in the field book Exhibit 2 in respect of the water rights of Petra the water is described as the water running from Troodos, i.e., "Korkut" river. The remaining entries made for waters in Petra describe the water as from the water running in the river Karkotis of Troodos "Karli Daga." The entries referred to in the land register, marked as Exhibits No. 13 and 14 in some cases boundaries are not given. Only reference to another document is made and in the instances where boundaries are given the descriptions were such as follows :

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"Running through Karkoti river on every 22 days from the Mosque Division."

"Running through Karkoti river on every 22 days from the Djami Nevbetti."

"Running through Karkoti river of Troodos from the Mulla Mustafa Division."

See Exhibit 13 (A-1) and (B-1) and (C-1).

20 The corresponding entries of these registrations in the field book are, however, described "Karkotis" river of Troodos. (See Exhibits 13 (A-2), 13 (B-2) and 13 (C-2) in the field book.) In our view all these descriptions of Petra water in the title 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. The able counsel for the defence drew our attention to the incompleteness of the description of the water in the register books and to some corrections made in red ink.

30 The entries pointed out to us, Exhibit 13 (A), (B) and (C), were apparently copied from the field book Exhibit No. 2 in which the corresponding entries are marked Exhibit 13 (A-2), Exhibit 13 (B-2) and Exhibit 13 (C-2). The field book being kept in Turkish, the translator in rendering the English version of the entries apparently committed some mistakes and in some instances entries were not recorded in appropriate columns. These were later corrected in red ink. The field book Exhibit No. 1 was the book prepared on the spot by the officer of the Land Registry detailed to do the work and they were made after local enquiries. For some years the field book was acted upon without any further formalities and certificates of registration were issued on the strength of this field book.

40 But after the lapse of a few years it was found necessary to carry out a fresh local enquiry in support of the records in the field book before the grant of title deeds and this was very natural because informal sales and alteration in properties might have been effected since the completion of the field book and to safeguard against such possibilities it was felt safer to hold a fresh enquiry. This we think is a reasonable explanation and is a part answer to the derogatory remarks of Defendants' counsel regarding field book and other records.

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Defendants throughout their pleadings and trial contended that Kakopetria people have unqualified and unrestricted right to irrigate their lands from all dams in the river Ay Nicolaos and Karvounas—Frantziko, Apliki and Karydhi being the principal ones—at any time of the day and every day of the week. That the inhabitants of villages below Kakopetria were only entitled to make use of the remaining water and that as far as Kakopetria people are concerned were not interested either in the shadow of a man or in the appearance of any star or group of stars. It is noteworthy that two witnesses of the Defendants who came from Galata, Alexandros Savva and Prokopis Kounnas, spoke about the water rights of Galata and they said that they take water from Kaphothokas and Vassiliko dams from the rising of the Pleiads to the sunrise until the 28th August and from the 28th August onwards from the rising of Orion up to sunrise and this on certain days of the week according to the former witness. Some Kakopetria properties are irrigated from the said two dams according to Har. Violaris, Defendants' witness. These two dams are in the river flowing above the two bridges in Kakopetria. This evidence goes to show that Kakopetria rights in respect of the water running in the rivers above Kakopetria are not unrestricted and that the system of fixing turns by observing movements of the stars is not an unfamiliar system in that part of the country. Another strong piece of evidence in favour of the Plaintiffs which corroborates the oral evidence given on their behalf is to be found in Exhibits 5 and 6 (the sketch and the reference). The reference constitutes part of Exhibit No. 5. These exhibits apart from being ancient documents (being prepared on the 10th August, 1901) satisfy the requirements of Section 4 of Law 14 of 1946 and as such their evidentiary value is equal to the weight which might be attached to the evidence of their author had he been alive and come to give evidence to the facts contained therein. It is in evidence that M. Salim was a surveyor employed in the service and as it will be inferred from the preface of this report addressed to the Registrar General of the Land Registry (see Exhibit 5, page 262), he had prepared his report, sketch and reference, in compliance with instructions he received from his director respecting enquiries to the divisions of the running water of Petra, and it is clear in carrying out his mission he made local enquiries, visited the various spots and prepared a lengthy report and a sketch which in our view shed considerable light to the water rights of the inhabitants of Kakopetria and of the lower villages including Petra. These have been produced from the archives of the Land Registry, i.e., they were in proper custody and we have no doubt that these documents were purported to be a continuous record. Salim Effendi in carrying out his local enquiry must have gathered information about the water rights of respective villages from competent persons who had personal knowledge of the fact and most probably collected information as it is usual from the village authorities of each village concerned. At any rate we have no reason to suppose that surveyor Salim, a disinterested official, prepared his report improperly from unreliable and incompetent sources. Sections 4 and 5 of Laws on Evidence 1946 might be relevantly read in this connection ; sections deal with two points :

(A) for the admissibility of such documentary evidence ;

(B) for what weight to be attached to such evidence.

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Points 1, 2 and 3 and 4 of Exhibit No. 6 relates to Frantziko, Karydhi, Befkari and Apliki channels. In his reference of Frantziko dam the following is recorded (relevant parts read from Ex. 5 (read)).

For Pera Chorio, Befkary and Apliki dams, that is for points 2, 3 and 4 on the sketch the following are to be found in the same reference (Read from Exhibit 5 . . . (read)).

The surveyor after completing all his enquiries concerning the different water divisions of Karkotis river prepared his report to which a reference is attached and for the dams of Frantziko, Karydhi and Apliki recorded
 10 what we have already read from the reference. 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 downwards 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.
 20 Kakopetria people, according to this reference, take their water from all the four dams above Kakopetria on Saturday, Sunday, Monday, Wednesday and Thursday from the appearance in their village of Pleiads to the sunrise and on Friday from the appearance of Pleiads until the shadow of a standing man will approach 7 feet and this is so from the 15th August to the 13th June of the following year, when they commence to take their water from the appearance of the Orion belt instead of Pleiads. Now when we consider the evidence given by the witnesses of both sides in the light of this piece of evidence we will hesitate but very little in finding who was telling the truth. Kakopetria people deny altogether having
 30 to do anything with the time in day or night or with the day of the week and that they recognise no limitation to their rights to irrigate their lands, whereas Petra asserted that on certain days of the week and when the shadow of a man standing at various dams is measured they start to take their turn of water until the appearance of Pleiads up to the 15th August and until the appearance of the Orion from the 28th August, new style calendar, to the following June, and that Kakopetria people are entitled to take their turn as from the appearance of Pleiads and of Orion as the case may be. The contention of the Plaintiffs fits in remarkably with what the surveyor of the Land Registry found in his local enquiry some
 40 47 years ago.

The title deeds of the Plaintiffs do not make mention of Karvounas river but simply relate to Karkotis river of Troodos. The Petra people's right over the water flowing in the river Karvounas is supported by oral evidence adduced by Plaintiffs which is strengthened by Exhibit No. 6, and Karvounas being a tributary of Karkotis river, we think that water rights relating to the water flowing in the main river extends also to the water running in the tributary rivers which fall to the main river.

We agree to some extent with the contention of the Defendants that Karkotis river in the Statement of Claim has been described as the river
 50 flowing below the two bridges in Kakopetria ; but it is clear through the

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Statement of Claim that the claim of the Plaintiffs was not confined to the waters running below the bridges but it extended also to the waters running in the rivers above the two bridges. That being so, we do not think that the claim of the Plaintiffs to the water above the two bridges is prejudiced. No doubt, in the absence of any corroborative documentary evidence, it might have weakened the contention of Plaintiffs that the river running from Troodos downwards and passing through Kakopetria and other villages is called Kariotis. Throughout from the evidence before us we have no doubt that, by Kariotis river in the title deeds and other documents, it was meant the river from Troodos up to the bridge in Kakopetria and also its continuation below the bridges of Kakopetria. As we suggested earlier it is possible that locally parts of a river might bear different names and notwithstanding the fact that the whole river might retain one name. 10

Much has been said about the springs and private springs (between Ayios Nicolaos Monastery and the two bridges in the village) falling into the river of Ay Nicola above Kakopetria and there was a particular effort on the part of the Defendants to explain and establish that Kakopetria people, by allowing their spring waters in the river side of Karkotis to fall into the said river, i.e., into the river of Ayios Nicolaos as Defendants would prefer to call it, they increased the volume of water running in the said river, and that the quantity they used for the irrigation of their gardens was not more or it could only be a bit more from the quantity of the water allowed to fall into the said river from various springs belonging to Kakopetria people; we had the evidence referring to the total quantity of water falling from the various springs. The estimation given differs considerably in the evidence given. It has been very difficult indeed for the Court to see the relevancy to the case of the existence of these springs and of the alleged amount discharged by them into the river bed. Petra people has no claim over the private spring waters of Kakopetria and this is not a matter in issue if spring waters not belonging to the main river or to its tributaries are allowed by private owners to run into the main river, i.e., Karkotis. We fail to see how the Court can protect their interests once such owners choose to allow such waters fall into the said river. 20 30

Before concluding our judgment we should like to touch to some points which the able Counsel for defence referred to in his address to the Court.

Reference was made to law 26 of 1945 which came to operation on the 1st September, 1946, in connection with the non-user of *ab antiquo* rights for 30 years and over. We would say that the Court did not find that Petra people discontinued their water rights by diverting the water from the dams above the village of Kakopetria for a period of 30 years or over. On the contrary we think that the acts of interference on the part of Kakopetria were not of a continuous character until after the year 1941 when the present action was instituted. 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 their rights to the water from Frantziko, Ayios Nicolaos, Apliki and Karydhi dams to the exclusion of Kakopetria people during the hours they claim. 40 50

As to the Counsel's remarks for the worthlessness of the title deeds, field book, land registers and M. Salim Effendi's report and sketch, elsewhere in this judgment Court dealt with the weight to be attached to the documentary evidence and we need not repeat ourselves, although we did so in another part of our judgment.

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As to the damages claimed in this case, we agree with the defence that no particulars were given and though it is evidence that some damages must have been incurred by the Plaintiffs owing to the interference of Kakopetria people, no amount has been proved and in fact Mr. Clerides, Counsel of Plaintiffs, did not insist on damages. Court cannot therefore allow any pecuniary damages.

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. Costs for two advocates allowed.

Judgment accordingly.

Counter-claim dismissed.

(Sgd.) M. ZEKIA,

President, District Court.

No. 35.

NOTICE OF APPEAL.

*In the
Supreme
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No. 35.
Notice of
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IN THE SUPREME COURT.

On Appeal from the District Court of Nicosia.

Between PAPA CHRISTOFOROS DEMETRIOU and
Others of Petra - - - - - Plaintiffs

and

THRASIVOULOS IOANNOU of Kakopetria
and as representing THE PROPRIETORS OF THE
IRRIGATION DIVISION OF KAKOPETRIA and
Others - - - - - Defendants.

TAKE NOTICE that the Defendants hereby appeal from the judgment given in the above action on the 6th November, 1948.

AND TAKE NOTICE that their appeal is against the whole of the said judgment.

AND FURTHER TAKE NOTICE that their grounds of appeal and the reasons therefor are :

1. The trial Court admitted inadmissible oral and documentary evidence and rejected admissible evidence that should have been admitted.

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2. The trial Court erred in giving to the term "Karkotis" or "Karkotis river" a denotation different and/or more extended than that pleaded by the Plaintiffs in their Statement of Claim.

3. The trial Court placed a wrong construction on the documentary evidence that was admitted in evidence.

4. The trial Court gave erroneous significance to the documentary evidence and plans admitted in evidence.

5. The trial Court erred in finding that the documentary evidence supported the version of the Plaintiffs' witnesses.

6. The trial Court was influenced in its judgment by hearsay 10 evidence.

7. The finding of the trial Court that Karkotis river extends upwards of Kakopetria village is against the weight of the evidence.

8. The finding of the trial Court that the Plaintiffs are entitled to the whole volume of the water running into the river above Kakopetria village is against the weight of the evidence.

9. The trial Court misdirected itself upon the facts and indulged in inferences of fact unwarranted by the evidence.

10. The trial Court drew mistaken inferences concerning the introduction in the Tapou Registers and Records of the term Troodos to gratify 20 the water running in the Karkotis river.

11. The trial Court gave to the field books of the Land Registry Office a significance and placed reliance on them which is beyond that given by the Land Registry themselves.

12. The finding of the trial Court concerning the spring water not being in issue is erroneous.

13. The finding of the trial Court that the Plaintiffs did not discontinue their alleged exclusive user upwards of Kakopetria is against the weight of the evidence.

14. The finding of the trial Court that the Defendants and/or the 30 Kakopetria people's user of the water was not continuous until only after 1941 is against the weight of the evidence.

15. The trial Court misdirected itself upon the Law.

16. The dismissal of the Counter-claim is erroneous.

17. The judgment of the trial Court appealed against is wrong and ought to be set aside and judgment should be entered dismissing the action of the Plaintiffs and entering judgment on the Counter-claim.

For M. HOURY, advocate,

E. EMILIANIDES, advocate.

G. HADJIPAVLOU.

ROSSIDES and TAVERNARIS.

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No. 36.

ARGUMENTS ON APPEAL.

*In the
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9th March, 1950.

CORAM: Sir EDWARD ST. J. JACKSON, C.J., and GRIFFITH WILLIAMS, J.

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For Appellants-Defendants: Mr. Houry with Mr. Haggipavlu and Mr. Tavernaris.

For Respondents: Mr. Clerides with Mr. Indianos.

Shorthand note of the proceedings ordered to be taken.

- 10 *Mr. Houry*: May it please your Lordships: This is an action brought by some residents of Petra village against some residents of Kakopetria for an injunction to restrain the Defendants from interfering with the right which the Plaintiffs claim to have had on certain days of the week, namely, Saturdays, Sundays, Tuesdays and Wednesdays from the afternoon when the shadow of a man standing at a certain point is 7 feet in length, i.e., from the Sanidhi tis Evrychou—Sanidhi tis Evrychou is equivalent to the sluice at Evrychou—is 7 feet in length, and at Tembria 6 feet and at Korakou 7 feet, to the rising of the Pleiads, from the beginning of May until the 28th August, and from the rising of Orion's belt from the
- 20 28th August until the beginning of May in the year following. The Plaintiffs claim an injunction and damages. The claim for damages was dismissed and as there is no cross-appeal it is not necessary for us to discuss the claim for damages. The action was started on the 26th September, 1941, and was heard in the spring of 1948. The claim of the Plaintiffs to the water is stated in their Statement of Claim to be based on: (A) Title deeds. (B) Imperial firmans. (C) Elams of the Sheri Court. Elams, my Lords, is equivalent to the judgment of the Sheri Courts. And, (D) Immemorial usage. In this connection I may refer your Lordships to paras. 4 and 5 of the Statement of Claim. No Imperial firmans and
- 30 no elams were produced at the trial—Imperial firmans would be equivalent to Orders in Council, they were executive orders issued by the Sultan—nor indeed was any evidence tendered concerning their existence. So the only two grounds that remained open to the Plaintiffs to prove their claim were the title deeds, that is to say, the Land Registry Office records, and immemorial usage.

The water to which the Plaintiffs make claim in the action is the water of, or running through the rivers Karvounas, Ayios Nicolaos and Karkotis, and this appears from para. 12, sub-para. (A), of the Statement of Claim.

- 40 It is, in our submission, important, my Lords, to remember that the Statement of Claim differentiates between the rivers Karvounas, Ayios Nicolaos and Karkotis, and in this connection I may respectfully refer your Lordships to paras. 3, 4, 9, 10 and 12 (A) of the Statement of Claim.

The Defendants on the other hand claim the right to take so much water from the Karvounas and Ayios Nicolaos rivers as is proportionate to the area of irrigable land of Kakopetria. This appears from the Defence, para. 4 (B), which is to be found before your Lordships at page 7. The

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Defendants do not claim the water except from certain dams which they name as being the Karidhi and the Appliki dams which occur in the Karvounas river, and from the Ayios Nicolaos dam and Frantziko dam which occur in the Ayios Nicolaos river. And this appears from their Defence, para. 4, sub-para. (c). I may here mention that there are two other dams in the Ayios Nicolaos river quite close to Kakopetria, namely Kapadhoka dam and Vassiliko dam, to which the defence lay no kind of claim whatsoever. The evidence concerning the Kapadhoka and the Vassiliko dams is that these two dams are Galata dams.

Chief Justice : In the injunction which they asked for and which was granted to them they refer to certain dams, as you pointed out, and "any other dam." Some time or other we shall have to see what that means, because an injunction was granted in those terms. 10

Mr. Houry : Yes.

Chief Justice : And the bed of the river, and practically everything that can be thought of and/or used in each case.

Mr. Houry : Water from private water sources belonging to Kakopetria people is, according to the defence, allowed to flow into the Karvounas and Ayios Nicolaos rivers and eventually into the Karkotis river. This water . . . 20

Chief Justice : Is there a map to which you can refer us ?

Mr. Houry : Map, sir ? The water sources—I do not think the water sources appear on the map—at the time when this case was heard there never was any local enquiry conducted to fix the various springs on the various spots, and I regret to say that it is one of the drawbacks in the case.

Chief Justice : It is a very great one, of course.

Mr. Houry : I appreciate that.

Chief Justice : Is this any help to us, the map which was Exhibit 6 ?

Mr. Houry : That Exhibit 6, my Lords, eventually I will have to submit that it should not be read in evidence for certain reasons I will state, but we have the survey plan which your Lordships can look at in order to see the various dams in the rivers, how they happen to occur, if that would be of any use, but even that map there which was prepared in 1901 and submitted with this plan, it gives a rough sketch of the position of the rivers and of the dams I think ; but eventually I will invite your Lordships not to read that plan. 30

Chief Justice : Yes, but you are now describing to us how certain rivers or streams flow into other rivers or streams, and if we were able to follow what you say from a map it would be a great help to us. 40

Mr. Houry : Yes, definitely, it would be a very great help.

Chief Justice : But you cannot produce one which would illustrate what you say ?

Mr. Houry : I cannot. I was retained too late in the day and there was no possibility of getting an arrangement.

Griffith Williams, J.: I hardly wonder if it has been going on since 1901.

Chief Justice: At any rate, would you mind repeating that?

Mr. Houry: This water in itself . . .

Chief Justice: What you told us a little bit before was that there were certain rivers and streams, I do not know how you described them.

Mr. Houry: Springs, water from private springs belonging to Kakopetria people allowed to flow into the Karvounas and Ayios Nicolaos rivers and finally into the Karkotis river.

10 *Chief Justice*: Just give us the name of the two tributaries again.

Mr. Houry: Ayios Nicolaos—it does not appear in that map before your Lordships—and Karvounas.

Chief Justice: And these flow into the Karkotis river?

Mr. Houry: Yes, the water is allowed to flow into these two tributaries. This water is itself more than the water used by the Kakopetria people, by the Defendants, and in conjunction with their co-villagers for the irrigation of their lands. This allegation is stated in the Defence, paras. (F) and (G). The defence is based on the fact that the Plaintiffs have no right to the water whatsoever which can interfere with the usage by Kakopetria
20 of the water of Karvounas and Ayios Nicolaos from the four dams I have mentioned. The claim of the Plaintiffs to *ab antiquo* rights to the water is denied in the defence, and this appears from the notes at page 7.

As regards the title deeds on which the Plaintiffs base their claim the Defendants put in a counter-claim, so that in case these title deeds do interfere with the rights of the Kakopetria people—I am not suggesting that they do, but in case they do—these title deeds should be so rectified so that they should not interfere with the rights of the Defendants.

30 *Chief Justice*: But your main claim is that the Plaintiffs have no rights whatever which would entitle them to limit or interfere with the use by the Appellants of the water flowing through four dams, namely, Karidhi, Appliki, Frantziko and Ayios Nicolaos.

Mr. Houry: That is exactly so.

Chief Justice: Will you just describe to us—probably everybody knows it except myself—exactly how these dams work? You have got, for instance, there is marked on this map Exhibit 6, for example, what appears to be a tributary flowing into a larger arm of a river, and on that tributary at some point or other is what is described as a dam which controls the water flowing from that tributary into the river. Can you tell us exactly how this thing works?

40 *Mr. Houry*: Roughly the dam is something which is put into the river bed to divert the water, it is in the bed of the river and its purpose is to divert the water into private channels for irrigation. This applies to the four dams. These dams are in the bed of the river.

Chief Justice: And this dispute, I understand, arose because the Plaintiffs said that you put these dams across the tributaries at a time you should not.

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Mr. Houry : Yes, that is exactly the position they take. Now, we employ another term, a sluice, a sluice is a device which exists in the tributary channel and its purpose is to control the distribution of the water, to divert it or to send it back to the river bed.

Chief Justice : It is in fact a small dam ?

Mr. Houry : My understanding of the word " dam " is a device the object of which is to turn back the water, to make the water accumulate so that it should be used eventually for irrigation, it may be erroneous but that is how I understand it. In the case of sluice, it is employed in a different sense.

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Chief Justice : As you use it here it is a blocking up—in this particular case—of certain tributaries which run into the Karkotis river ?

Mr. Houry : Either wholly or partially, may I remind your Lordships.

Chief Justice : Either wholly or partially, in such a way that at any rate a part of the water instead of reaching the river runs off somewhere else ?

Mr. Houry : That is so, my Lords, it is, in our respectful submission, necessary in this case to bear in mind that the Kakopetria people are riparian owners, along the tributaries which we have mentioned, Karvounas and Ayios Nicolaos.

20

Chief Justice : Anything said about this in the Court below ?

Mr. Houry : That they were riparian owners, yes.

Chief Justice : Did any argument arise from that ?

Mr. Houry : I do not remember any legal argument, my Lords. Now, my Lords, it is also necessary, in our submission, to remind your Lordships that the land in Kakopetria that is capable of being irrigated by these four dams, is limited, according to the evidence it is not more than 300 or 320 donums at the dams.

Griffith Williams, J. : It is 240.

Mr. Houry : It is roughly between 240 and 320.

30

Griffith Williams, J. : It must be comparatively a very small area, nothing like the amount the Petra people use.

Mr. Houry : Nothing at all, it is only an area of 400 donums, and now that Kakopetria is becoming more and more a summer resort the tendency is to decrease the area which is cultivated rather than to increase it, that is borne out by the evidence.

Chief Justice : Suppose the boundary of the village changes ?

Mr. Houry : I do not think the capacity or rather the area which is capable of being irrigated by these four dams will alter, because the area capable of being irrigated by these four dams is limited, and it depends on the altitude of this particular dam. Your Lordship would be perfectly right if the area is increased so that part of what is Galata is comprised in Kakopetria.

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Griffith Williams, J. : But Galata also waters from these dams ?

Mr. Houry : Not from these four dams I mentioned, Galata takes from Kapadhoka and Vassiliko, almost at the foot of Ayios Nicolaos.

Griffith Williams, J. : Yes, those are the two dams you told us about ?

Mr. Houry : Yes. One factor which we could mention at this stage is that according to the evidence there was no system at Kakopetria by which they were dividing the water by hour, and the absence of such a system of distribution is, in our submission, of paramount importance because it has a tendency to corroborate the version of the Defendants that they were at liberty to help themselves to as much water from the
10 river as the requirements of their lands demanded. While, if the version of the Plaintiffs were to be believed, that only very limited hours were available for Kakopetria from the rising of the Pleiades up to sunrise, and the time between the rising of the Pleiades and sunrise is sometimes very insignificant, until the 28th August, one would expect a very accurate system of distribution to develop at Kakopetria and to be rigidly enforced. This is roughly stated in the pleadings.

I shall now describe the physical nature of the rivers and the dams so far as is necessary to a proper understanding of the issues before your Lordships. The river Karkotis is, according to the pleadings, formed at
20 point in or below Kakopetria, and it runs a northward downhill course from the Troodos mountains, and it reaches the east shore at Morphou Bay.

Chief Justice : Have you any idea of the distance ?

Mr. Houry : Well, the evidence indicates that between Kakopetria and Petra, my Lords, is about 12 miles. The distance may be about 20 miles, I should say, subject to correction, I think that would be correct, Mr. Clerides ?

Mr. Clerides : Not so much as that.

Chief Justice : I have it that the distance from Petra to the sea as the crow flies is four miles. As the crow flies. So if it is 12 from Kakopetria,
30 16 miles altogether, roughly.

Mr. Houry : That is a rough estimate.

Griffith Williams, J. : The distance of the river would be considerably more, they twist about, don't they ?

Mr. Houry : We could work out the distance. Along its course there is a succession of villages. The uppermost is Kakopetria and then comes Galata. Petra, as I said, is 12 miles from Kakopetria. There are two tributaries above Kakopetria that supply water to the Karkotis river. These are the ones which I have just named, Karvounas and Ayios Nicolaos, and it is only at the point of their junction at Kakopetria that the Karkotis
40 river is formed.

Chief Justice : The Court was against you on that, wasn't it ?

Mr. Houry : My Lords, yes, the Court was against me, but the pleadings are very much in my favour, I submit.

Chief Justice : The pleadings are only allegation and the other is judgment.

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Mr. Houry : But they are admissions against those who pleaded them. If the Plaintiffs come and say that the Karkotis is formed from the point of their junction at Kakopetria downwards there is an admission against them, and I shall soon have some submissions to make on this point, but a large portion of the pleadings supports me : Along Karvounas river there are two dams, the uppermost being one called Karidhi and the other called Appliki, and along Ayios Nicolaos river there are likewise two dams. Now, while I am speaking of Karvounas, this selfsame river is known as Garillis, Karvounas is also known as Garillis, Garillis and Karvounas are equivalent terms. In the Ayios Nicolaos river there are 10 likewise two dams, the uppermost being known as Ayios Nicolaos and further down it is the Frantziko. All these dams are a good way above Kakopetria village.

Chief Justice : Are these two tributaries, Karvounas and Ayios Nicolaos shown on this Exhibit 6 ?

Mr. Houry : They are, my Lords, they are shown, except for the names the sketch is more or less correct.

Chief Justice : Can you mark it in pencil ?

Griffith Williams J. : But the names for the rivers are only the names for the locality, the river is called by the name of the locality. Ayios 20 Nicolaos . . .

Mr. Houry : Ayios Nicolaos is a monastery.

Griffith Williams J. : All that locality is known as Ayios Nicolaos, isn't it ?

Mr. Houry : Yes.

Griffith Williams J. : And the dam is called Ayios Nicolaos ?

Mr. Houry : Yes, the uppermost.

Griffith Williams J. : And isn't that precisely the same with the name of the river, Karidhis river ?

Mr. Houry : No, the river is not known as Karidhis, it is known as 30 Garillis.

(Mr. Houry marks names on map Exhibit 6.)

Chief Justice (to Mr. Clerides) : Will you just look at that and see if you agree with what has been marked on Exhibit 6 ?

Mr. Clerides : Yes, my Lord, I do.

Griffith Williams J. : But these names, Karidhis and Garillis are very often interchangeable ?

Mr. Houry : No, my Lord, not in Greek. In each case these dams supply a channel which runs along Kakopetria lands and finally it finds its way back into each particular tributary. So that the water not 40 exhausted in irrigation on Kakopetria lands finds its way back into the rivers above Kakopetria, and except for irrigating the Kakopetria lands the water diverted cannot run into waste, it finds its way back before the junction of the two tributaries. The Frantziko dam stands on a slightly

different footing. The Frantziko dam diverts the water from the Ayios Nicolaos river into a long main channel that traverses the whole of the lands lying between the dam and the Karvounas river in the opposite direction, with an indirect system of subsidiary channels which renders the water accessible to most of the Kakopetria lands. And the surplus water of this Frantziko channel is thrown not into the Ayios, Nicolaos river but into the Karvounas river opposite. From the Frantziko dam up to a distance of about a mile along the Frantziko main channel there is the so-called Frantziko sluice.

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10 *Chief Justice* : Up to a mile, you say?

Mr. Houry : Up to about a mile along the original main channel, there is the Frantziko sluice.

Chief Justice : Do you mean that the sluice is about a mile away from the dam ?

Mr. Houry : Yes, but it is on the Frantziko channel.

Chief Justice : Because you said up to about a mile.

Mr. Houry : The distance between the dam and the sluice is about a mile.

20 *Chief Justice* : Is the exact location of these dams and sluices going to be sufficiently important to make it necessary that we should have a plan, or do you think the question can be argued without exact knowledge of that ? What do you think, Mr. Houry ? Because you are speaking now of a sluice at a particular point along a particular channel from a particular dam. Well, we do not know anything about it, we have no plan to show us. Is it necessary that we should have one ? It may be that we should not. The District Court did not have one and it may be that the main questions can be answered without a plan. Do you think they can ?

30 *Mr. Houry* : My Lords, there are two alternatives, it is possible that your Lordships may not find it necessary to have a special plan.

40 *Chief Justice* : I mean, you are the Appellant, and you might conceivably lose because we do not understand what you say, and it may be that we do not understand that because we have not got a plan. I mean, it is for you to say whether you require a plan in order to make us understand the questions we shall have to answer, otherwise we shall have to answer them without a plan, and that may conceivably be to your cost. I do not say that it will be, but if it is necessary that we should have an adjournment to enable you to have a plan prepared of the particular points which it is necessary for you to establish, that is to say, as to localities, sluices and so on, we would of course grant one, otherwise we should have to go on without it : that may or may not be to your disadvantage, I simply do not know. Same thing for Mr. Clerides, he may think he can get along without a plan but he may be taking a risk. Anyhow, we have not got a plan now, so we must do the best we can to understand what you are saying to us by reference to this one. And, in order to take you back to the point at which I interrupted you, I have a note here that you told us that about a mile away from the Frantziko dam, along the main channel from that dam there is a sluice which is called the Frantziko sluice. Now, how do we go on from there ?

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Mr. Houry : That sluice is a device that controls the direction of the water into subsidiary channels.

Griffith Williams J. : Any particular number of subsidiary channels to that one sluice ?

Mr. Houry : Yes, my Lord.

Griffith Williams J. : How many ?

Mr. Houry : Quite a few. It can control the distribution of the water to quite a few channels.

Griffith Williams J. : Several ?

Mr. Houry : Several. 10

Chief Justice : Are you able to take a red pencil and mark for us on these two tributaries, Karvounas and Ayios Nicolaos, the position of these four dams of which you have told us, two on each, can you do that roughly ?

Mr. Houry : Yes, I can, roughly.

Chief Justice : You have already marked the tributaries. If you just put the initials.

(Mr. Houry marks the four dams on Exhibit 6.)

Mr. Houry : The Frantziko channel starts off from Ayios Nicolaos, further up, so the uppermost would be Ayios Nicolaos, here, and I should say Frantziko here, and that would be Frantziko subsidiary channel, that runs along here, this direction, and there is a sluice here. I am talking about this sluice, it is at a distance of about a mile. 20

Chief Justice : All right. Now Karvounas.

Mr. Houry : Karvounas. There is Karidhi uppermost and then comes Appliki.

Chief Justice : Just show it to Mr. Clerides to see if there is anything he disagrees with about that.

(Map Exhibit 6 shown to Mr. Clerides.)

Chief Justice : It can only be approximate, of course. 30

Mr. Clerides : Yes, my Lord.

Mr. Houry : Now, it is in this channel, my Lords, that I have referred your Lordships to, that it can throw its surplus water, instead of throwing it into Karvounas, and it finds its way back into the Karkotis river at the junction.

Chief Justice : Now then, you have told us that that particular sluice on the main channel from the Frantziko dam and about a mile from the dam, distributes its water into a number of small channels and that surplus water goes into the Karvounas ?

Mr. Houry : It goes into the Karvounas river, that is so, my Lords. But it is also possible by diverting the sluice at Frantziko to block the water and to throw it back into the Ayios Nicolaos river. All the water 40

that enters into the artificial channels from the four dams that I have mentioned, that I have just described, falls back into the one or other of the two tributaries, Karvounas and Ayios Nicolaos, before their junction and after irrigating the Kakopetria lands. The dams feeding the above system of channels never exhaust the water running in the natural streams, in the natural bed of the rivers, but they take, according to the evidence, one-sixth or one-fifth of the volume of the rivers' water.

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Chief Justice : You mean one-sixth of the water of both the Ayios Nicolaos and the Karvounas ?

10 *Mr. Houry :* Yes, of both. According to the evidence the channels take no more than one-fifth or one-sixth of the volume of the rivers' water. Nearer to Kakopetria.

Chief Justice : I suppose that proportion of the water that you take would vary with the amount of water in the rivers ?

Mr. Houry : Yes, the volume is never constant, it is variable during the seasons of the year, and it is also liable to variation on account of the amount of rainfall, according to the evidence.

20 *Chief Justice :* That is average, I suppose, because in the year in which this dispute started, in 1941, there is evidence that it was a very dry year—as one may suppose these disputes start in dry years—now the rains are enough for anybody and they get on happily.

Mr. Houry : Quite. Now, nearer to Kakopetria, at the foot of Ayios Nicolaos river, between Kakopetria and Frantziko dams, there are two other dams which are called Kapadhoka and Vassiliko.

Chief Justice : You say that is between Kakopetria and Frantziko dam ?

Mr. Houry : Yes, at nearly the foot of the river. I will indicate it to your Lordships. (*Shows on Exhibit 6.*) Vassiliko is just before the junction of the two rivers, both happen to be on the Karvounas.

30 (*Map Exhibit 6 shown to Mr. Clerides, with entries.*)

Mr. Clerides : Vassiliko is below the carriage road.

Mr. Houry : But it is above the junction.

Mr. Clerides : No, the evidence is that Vassiliko is below the junction.

Mr. Houry : Very well, it makes no difference to me.

(*Mr. Clerides marks Vassiliko on Exhibit 6.*)

Mr. Houry : This is where I say Vassiliko is and this is where Mr. Clerides says it is.

Mr. Clerides : It does not make any difference.

40 *Mr. Houry :* The Kakopetria people lay no claim on these two dams, the Kapadhoka and the Vassiliko. And according to the evidence these serve only Galata village.

Then, I do not know if your Lordships will eventually read the exhibits of Salim Effendi, I shall invite you in due course to exclude

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them from the evidence, but in case these exhibits are read, I may refer your Lordships to Exhibit 5, reference page 265, that speaks of Kapadhoka and Vassiliko as being used by the Galata people. The Plaintiffs take no water . . .

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Chief Justice : Where does that come ?

Mr. Houry : It is in the reference of Exhibit 5, it is to be found in the Exhibits at page 265.

Chief Justice : "No. 5 represents the dam of the channel called Kapathoka of Galata village. No. 6 represents the dam of the channel called Vassiliko of Galata village." 10

Mr. Houry : So in both cases this supports my submission that both these dams are Galata dams. The Kakopetria people have nothing to do with these and do not interfere, and in fact the pleadings make no reference to interference with these dams.

Now, coming to the Plaintiffs, it is in our submission important to remember that the Plaintiffs take no water from any of these six dams which I have mentioned, they take their water from certain other dams along the Karkotis river and they claim that they have the right to take the water from the dams at Sanidhi tis Evrychou at Evrychou, from Vrochtos at Tembria—sanidhi means sluice—and at Sanidhi tis Korakou 20 at Korakou. These three villages are a long way downhill, and the water which flows into the Karkotis river at the point of its formation at Kakopetria flows into the natural stream for a good number of miles before it reaches these three sluices from which Petra people claim the right to take the water. My Lords, the evidence is not perfectly clear on this point, and I think I would also be reflecting the view of my friend on the other side when I say that by claiming the right to take the water from these three sluices the Plaintiffs as well maintain that the water is diverted into the bed of the river again, it is not taken into any artificial channels at these points. 30

Mr. Clerides : No, no.

Mr. Houry : Very well, you mean that it goes into artificial channels from these points ?

Mr. Clerides : I think, yes.

Chief Justice : Anyhow, it differs from what you say.

Mr. Houry : I will say something about pleadings. It is a general rule of pleadings that matters in dispute between parties are limited by the pleadings, and when a statement of fact is pleaded, in one pleading, and it is admitted in the opponent's answer no issue arises upon which the Court can adjudicate. No issue of fact arises upon which the Court 40 can adjudicate.

Now, the exact denotation of the term "Karkotis" river is, in our respectful submission, not in issue between the parties, and yet the trial Court, in spite of this, gave to the term a more extended meaning than that given by the Plaintiffs and accepted by the Defendants. The Statement of Claim, para. 1, draws a clear distinction between Karvounas

and Ayios Nicolaos and Karkotis rivers. I will read paragraph 1 of the Statement of Claim :

“ The Plaintiffs mentioned in the writ of summons and in the attached thereto list, are all inhabitants of the village Petra and owners of fields irrigable from the waters of the rivers ‘ Karvouna,’ ‘ Ayios Nicolaos ’ and ‘ Karkotis.’ ”

The distinction is admitted in para. 1 of the Defence :

10 “ Defendants admit the 1st paragraph of the Statement of Claim, with the exception that the Plaintiffs are owners of fields irrigable from the water of the rivers ‘ Karvouna,’ ‘ Ayios Nicolaos ’ and ‘ Karkotis.’ ”

The distinction is maintained in paragraph 3 of the Statement of Claim, which asserts that the waters of the rivers Karvounas and Ayios Nicolaos are joined near the village of Kakopetria at which point they form the river Karkotis. I read the Statement of Claim, paragraph 3 :

20 “ The waters of the rivers ‘ Karvounas,’ ‘ Ayios Nicolaos ’ are joined near the village Kakopetria and form the river Karkotis the water of which passes through several dams the principal ones being the dams ‘ Ayios Nicolaos,’ ‘ Frantziko ’ and ‘ Karidia ’ all situate at or in the vicinity of the village Kakopetria.”

This assertion is again admitted in the Defence at paragraph 3 :

“ With regard to the third para. of the Statement of Claim . . . ”

Chief Justice : Is there possibly some ambiguity there, because para. 3 of the Statement of Claim was that the water of these tributaries joined near the village, as you read, and formed the river Karkotis : “ The water of which passes through several dams the principal ones being,” and then the names, the ones you have been talking about, two of which are above the dam.

30 *Mr. Houry* : I will come to that, but they do not claim that by reason of their owning the Karkotis river they claim it by reason of being owners of Ayios Nicolaos and Karvounas rivers. I will come to that later on, with your Lordships’ permission.

The trial Court in its judgment says, at page 126 :

“ From the evidence before us we have no doubt that, by Kariotis river in the title deeds and other documents, it was meant the river from Troodos up to the bridge in Kakopetria and also its continuation below the bridges of Kakopetria.”

Now, paragraph 4 of the Statement of Claim again maintains the same distinction about which I have just spoken.

40 Now, the trial Court again in its judgment at pages 125-126 says :

“ It is clear through the Statement of Claim that the claim of the Plaintiffs was not confined to the waters running below the bridges but it extended also to the waters running in the rivers above the two bridges.”

That is what the trial Court said. Now this is true. In our submission the Plaintiffs claim the water above the bridges not in virtue of their

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supposed rights as owners of Karkotis river, but as owners of Ayios Nicolaos and Karvounas rivers. And if the Plaintiffs could establish their rights to the water of these two rivers, namely Karvounas and Ayios Nicolaos, they would doubtless succeed. But they cannot succeed, in our submission, to establish the rights to the water of these two rivers merely by proving the rights to the Karkotis river water. In other words, by proving their rights to the water of the Karkotis river the Plaintiffs do not prove their rights to the waters of Ayios Nicolaos and Karvounas.

I shall submit in due course, my Lords, an analysis of the oral evidence submitted on behalf of the Plaintiffs, which will establish the fact, undisputed by the pleadings, that the Karkotis river is formed at the junction of the two tributaries in or below Kakopetria. I do not propose on this specific matter to review the evidence submitted on behalf of the Defendants, because all the witnesses of the Defendants with one voice proclaim that the Karkotis river is formed at the junction of the two tributaries in or below Kakopetria. 10

Now, it is our submission, my Lords, that the Plaintiffs failed to prove their case. But if we assume for a minute that the Plaintiffs did prove their rights either by their title deeds or by their *ab antiquo* usage, the only two grounds which remain open to them, as I have indicated, 20 the question remains that the Kakopetria people have for the last 50 years been making use of the water in the way and in the measure stated in their Defence, and this without interruption.

The new law on the subject of acquisition of immovable property is Law 26 of 1945. This was brought into force on the 1st September, 1946, while this action was still pending the law was changed.

Chief Justice : Do you want to refer to it ?

Mr. Houry : Yes, it is Law 26 of 1945. It repeals the old law by section 81 and it establishes this period, the period of acquiring property, to 30 years. It is section 9. I am reading from section 9 : 30

“ Subject to the provisions of section 8 of this Law, proof of undisputed and uninterrupted adverse possession by a person, or by those under whom he claims, of immovable property for the full period of thirty years, shall entitle such person to be deemed to be the owner of such property and to have the same registered in his name : ”

I may here respectfully remind your Lordships that immovable property includes water ; water is included in the description :

“ Provided that nothing in this section contained shall affect the period of prescription with regard to any immovable property 40 which began to be adversely possessed before the commencement of this Law, and all matters relating to prescription during such period shall continue to be governed by the provisions of the enactments repealed by this Law relating to prescription, as if this Law had not been passed :

“ Provided further that notwithstanding the existence of any disability operating under such enactments to extend the period of prescription such period shall not in any case exceed thirty years in all even where any such disability may continue to subsist at the expiration of thirty years.” 50

That is the second proviso, my Lords, in all thirty years.

The present action was started in 1941, my Lords, but in our respectful view the Court will have to examine the situation as it existed in the year 1911, and to apply the law as from that period, thirty years. From 1911. If, therefore, the Plaintiffs abandoned their rights, were shown to have abandoned their rights to the water in the way and in the measure in which the Kakopetria people have been using it, for the thirty years next before the action was brought, then there is, in our submission, an abandonment of rights. There is a dictum which is of supreme importance, my Lords, in this case, that even though a person is entitled to a certain right by *ab antiquo* user if for a substantial period he is shown to have abandoned that right, then he no longer is in a position to assert it, and this is to be found, this dictum, in Volume 12 of the Cyprus Law Reports. It is the case of *Savvas Hji Panayi and others v. Papa Michael Kathomouta*. The dictum is referred to at page 2 and it is a repetition of the same dictum which was made by the Court of Appeal in *Sadyk v. Papa Michaili Yanni*, Vol. 6, Cyprus Law Reports, p. 45. This is what it says :

“ As a general rule of law it is clear that rights of irrigation are governed by *ab antiquo* user, but we doubt whether user which has been discontinued for a substantial length of time would be such user as the law contemplates. And, taking into consideration . . . ”

I am not concerned with that. If the Plaintiffs are to succeed on their claim to *ab antiquo* user they would have not only to prove it but they would have to persuade the Court that they did not abandon, for any length of time, the exercise of that right. Then, my Lords, I might here also finally mention another aspect of the law, an aspect which the trial Court did accept. The Plaintiffs would have to establish their rights, otherwise they lose. For us, for the Defendants, we have to establish nothing at all, even though we be trespassers we would still win this case on the footing that the Plaintiffs themselves have failed to prove a right which we ourselves might have violated.

I now propose, subject to your Lordships' permission, to review the oral evidence that has been submitted on behalf of the Plaintiffs. I shall try to show how that evidence fails to establish any system, how it is self-contradictory, how it is self-destructive.

Several witnesses have spoken about the moment that Kakopetria is supposed to be entitled to start taking the water. They put it at the rising of the Pleiads or the Orion Belt. It is obvious that these stars can be observed sooner by one village than by another. And yet the evidence is wholly silent as to the village or spot from which the Pleiads must make their appearance to entitle Kakopetria people to divert the water. Papa Georghi Toffi of Petra, witness No. 13 of the Plaintiffs, does not know whether the rising of the Pleiads in June coincides with sunrise. (Notes, page 53, this statement occurs) : “ I do not know if it coincides with the rising of the sun.” Several witnesses speak of Kakopetria's right ending at sunrise or when the sun is visible at Kakopetria. Rodosthenis Michael of Korakou, witness for the Plaintiffs No. 2, in answer to a question put by the Court, says that on Friday Kakopetria is entitled to have the water up to the time when the shadow of a man is 7 feet. It appears in the notes at page 17 : “ Kakopetria is entitled to have the water on Friday up to the time when a man's shadow is 7 feet.”

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This is confirmed by witness 3 (notes page 21). He says: "Kakopetria people take the water every day from the rising of the Pleiads up to sunrise except Friday when they are entitled to take the water only when the shadow is 7 feet at the Frantziko and Karidhi dams."

This witness, however, manages to reconcile that statement with what he says at page 17 of the notes, that Evrychou, Tembria and Korakou are entitled to take the water every day in the week: "From sunrise the villages Evrychou, Tembria and Korakou are entitled to take the water every day in the week." Irrespective of the shadow of a man. On a Friday . . .

10

Griffith Williams J.: Then it goes on saying that: "These three villages are entitled to take water until the time when the shadow of a man is 7 feet on the ground."

Mr. Houry: Yes, "when Petra is entitled to take the water." This is inconsistent with his previous statement.

Now, according to witness 2, at page 17, Kakopetria is not entitled to take water on Tuesday morning because the water on that morning goes to Tembria one-sixth and Linou one-sixth: "When we say Tuesday night we mean Monday night towards the sunrise of Tuesday morning and on this night Tembria village is entitled one-sixth of the water in the 20 river the remaining water being taken at Linou village."

Chief Justice: Is Tembria above or below Linou?

Mr. Houry: Tembria is above Linou.

The evidence does not show how this water is divided between Tembria and Linou, witness 1 says nothing about this, about these two villages taking the water, whilst witness 3 asserts that during the day on Tuesdays the water goes to Linou and Katidhata. (Notes page 21):

"On Tuesday day time Linou and Katydhata are entitled to the water and during the night time Elia." It says clearly that on Tuesday day time Linou and Katydhata are entitled to the water and during the 30 night Elia. It does not say it is between Linou and Tembria, as witness 2 asserts. And at night, according to the witness at page 17, the water goes to Elia. (Page 17): "Elia takes the water on Monday night and Thursday night."

[sic]

Witness 10 tells us that Elia takes the water on Tuesdays and Fridays, at daybreak. (Notes page 47.) You will see, my Lords, this witness says Elia takes the water, witness 1 says so at page 17 that Elia takes the water on Monday and Thursday night, whilst witness 10 tells us that Elia takes the water on Tuesdays and Fridays, Fridays at daybreak. (Notes page 47.) "Tuesday afternoon Elia takes the water. (Witness 40 corrects and says Tuesday afternoon Petra takes the water.) Wednesday afternoon Elia takes the water (witness again corrects himself) Petra takes the water. Thursday afternoon Elia takes the water. Elia takes the water on Tuesdays and Fridays."

[sic]

Witnesses 6 and 7 tell us that on Tuesdays only Linou takes the water, and this appears at pages 28, 29 and 30 of the notes. At page 28: "On Tuesday Linou takes the water." And then, page 30: "On Tuesday Linou is entitled to take the water." Witness 10 tells us that on Tuesdays Katydhata takes the water and later on says Elia takes the water. (Notes

page 47.) "Tuesday afternoon and Wednesday afternoon. Monday afternoon to Tuesday sunrise is left to Katydhata." Then further down: "Wednesday afternoon Elia takes." Witness 8 tells us that on Tuesday afternoon Petra takes the water. (Notes page 36.) "Tuesday afternoon Petra takes it," whilst witness 12 tells us that Petra takes the water on Tuesdays after sunset while Linou takes the water earlier on Tuesday. (Notes page 51.) "On Tuesday after sunset Petra takes the water." That is no longer the afternoon, it is after sunset.

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10 While Linou is taking the water earlier on that day. Witness 13 tells us that on Tuesdays Petra takes the water from Linou and Katydhata at sunset. (Page 52 of the notes.) "On Tuesday at sunset we take the water from Linou and Katydhata." "We" means the Petra people. Witness 7 tells us that on Tuesdays Linou is entitled to the water up to the time the shadow is 7 feet, when Petra takes the water, and that from Monday night to Tuesday morning sunrise Elia takes the water. This statement appears at page 30 of the notes: "Monday night to Tuesday sunrise Elia takes the water and from sunrise up to the time when the shadow of a man is 7 feet when Petra takes the water." They do not speak of after sunset but when the shadow is 7 feet.

20 There are other examples of these contradictions. Witness 8 tells us that Petra takes from Saturday afternoon. This statement occurs at page 35: "Petra is entitled to take the water on the following days from Saturday afternoon." While witness 10 tells us Petra takes the water from Saturday afternoon. (Notes page 47.) Witness 8 tells us Petra takes the water on Sunday night, page 36: "On Sunday night Petra takes the water." While witness 10 tells us that Petra takes it on Sunday afternoon. (Page 47): "Sunday afternoon Petra takes the water."

30 Witness 8 again tells us that Petra takes from Wednesday afternoon. This statement occurs at page 36: "Wednesday afternoon again Petra takes it." While witness 10 tells us: Elia takes from Wednesday afternoon. Page 47: "Wednesday afternoon Elia takes the water." Witness 10 says that Petra takes also on Mondays in the afternoon. (Page 47): "Monday afternoon Petra takes the water," then of course he says he corrects himself. While witnesses 8 and 12 say that from Mondays in the afternoon Elia takes the water. (Notes pages 35, 36 and 51.) "Saturday afternoon to Sunday morning Petra is entitled to take the water on the following days." "From Monday afternoon Elia starts taking it." And witness 10 goes on to say that Mondays in the afternoon to sunrise on Tuesdays Katydhata takes the water. (Notes page 47.) "Monday
40 afternoon to Tuesday sunrise is left to Katydhata." While witness 2 says that Elia takes the water on Mondays and Thursdays. (Page 17.) [sic] Witness 5 says Elia takes the water on Tuesdays and on Thursdays. (Page 25.) Witness 3 says that Mondays and Thursdays in the afternoon Elia takes the water. (Notes page 21.) "On Monday afternoon Elia is entitled to the water." While witness 1 does not mention who takes water on Mondays. (Notes page 11.) Witness 5 says: Linou and Katydhata take the water "when Elia finishes." That is to say on Wednesdays and Fridays. (Notes page 25.) "Elia takes the water also on Thursday
50 towards Friday. Linou and Katydhata take the water after Elia had finished taking their water." While witnesses 2 and 8 do not mention when Linou and Katydhata take water (notes pages 17 and 35), though

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they mention these villages. While witnesses 3, 6 and 7 do not mention these villages at all. (Notes pages 20, 28 and 30.) Witness 10 mentions only Katydhata, not Linou, as taking water on Tuesdays at sunrise. (Notes page 47.) "Monday afternoon to Tuesday sunrise is left to Katydhata." He mentions nothing at all about Linou. Witness 13 mentions Linou and Katydhata as taking water up to sunset on Tuesdays. It appears at page 52. "On Tuesday at sunset we take the water from Linou and Katydhata." Witness 1 says that at sunrise water is taken by Evrychou, Tembria and Korakou. (Page 11.) Witness 2 says, at page 17: "At the rising of the Pleiades the following villages are entitled to take water: 10 Kakopetria, Galata, Sina Oros, Kalliana, Evrychou, Tembria and Korakou" take the water. While witness 1 says the water remaining after Kakopetria, Galata and Sina Oros take the water is used by Tembria, Evrychou and Korakou. (Page 11.) And witness 1 says that at the rising of the Pleiades the water is taken by Ayios Epiphanius. (Page 12.) Witnesses 3, 7 and 12 make no mention whatsoever of Ayios Epiphanius. (Notes at pages 20, 30 and 50.) Now, according to witness 3, Kakopetria takes the water from the rising of the Pleiades from June to October, according to witness 3. June to October. This statement occurs at page 21. "Kakopetria takes 20 the water from the rising of the Pleiades every night except Tuesday towards the morning." And according to witness 1, from the rising of the Pleiades Kakopetria is entitled to take the water up to sunrise up to the 28th August, and from thence from the rising of Orion Belt to sunrise thereafter. This statement appears at page 11.

Griffith Williams J.: Except Tuesday, every night from the rising of the Pleiades up to sunrise?

Mr. Houry: Yes, but until the 28th August. The previous witness 3 says Kakopetria is entitled to the water from the rising of the Pleiades from June to October, while witness 1 says from the rising of the Pleiades up to the 28th August, and from the rising of Orion's Belt from the 28th 30 August and thereafter. This witness's statement appears at page 11.

Witness 3 says that Kakopetria takes from the rising of the Pleiades every night except Tuesdays to sunrise. Notes page 21. Witness 5 says that Kakopetria takes the water on all days except Tuesdays. Page 25: "Kakopetria takes the water on all days except Tuesdays." Witness 7 says Kakopetria takes the water every day except Monday night.

Griffith Williams J.: This is explained afterwards.

Mr. Houry: Monday night to Tuesday sunrise. Witness 7 says that Kakopetria takes the water every night except Mondays.

Griffith Williams J.: Witness 2 says: "Every night except Tuesdays. 40 When we say Tuesday night we mean Monday night towards sunrise on Tuesday morning." Witness 2 at page 17. So he corroborates him, doesn't he? "Kakopetria is entitled to the water every night except Tuesday night. When we say Tuesday night we mean Monday night towards the sunrise of Tuesday morning." So that agrees, that Kakopetria was entitled to it from Monday night.

Mr. Houry: Witness 7 says that, witnesses 8 and 10 say Kakopetria takes the water every day except Tuesdays. Notes pages 35 and 47.

Chief Justice : Have you got a very long detailed list of particular contradictions ? Because you remember that the Court said that it would have been very difficult for them to come to a conclusion if they had relied on the evidence. They did say that they preferred the oral evidence on the part of the Plaintiffs, the Defendants and naturally you criticise in order to suggest that they should not, but the documents seem to have weighed with them more than anything.

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Mr. Houry : Yes, that is so, the trial Court said that if it had not been for the corroboration which they found in the documentary evidence
10 it would have been very difficult for them to come to any conclusion.

Now, my Lords, I will pass to another set of contradictions on the oral evidence. Petra takes its water, according to witness 14, on Saturdays from Paliomylos when the shadow of a man is 5 feet, and from Vrokhtos when it is 6 feet and from Korakou and Evrychou when it is 7 feet. On Saturdays, Tuesdays and Wednesdays, this witness goes on to say, from Korakou when the shadow is 7 feet. And this statement appears at page 54 of the notes. I will not repeat it in detail, but it appears clearly in the notes. Witness 12 says Petra takes the water on Tuesdays after sunset. This appears in the notes at page 51. While witness 13 says
20 that Petra takes the water on Tuesdays from Linou and Katydhata at sunset. (Notes page 52.) Witness 8 says Petra takes the water on Sunday night. (Notes page 36.) Until the rising of the Pleiades. He does not mention Orion's Belt at all. According to witness 1 Galata takes its water from Vassiliko and Frantziko channel. Now, my Lords, this is a significant statement, Galata never takes water from the Frantziko channel at all. It is incapable of taking water from Frantziko channel. (Page 12.) Evrychou, Tembria and Korakou take water on the same days as those of Petra, according to witness 5. (Notes page 25.) And according to
30 witness 2, Evrychou, Korakou and Tembria take water on every day in the week. According to witness 3, Petra does not take water on Fridays, and according to witness 10, Evrychou takes every day except on Tuesdays. Witness 3 makes no mention at all of Ayios Epiphanius, Flassou, Linou, Katydhata, Ayios Georghios, which are mentioned by witness 8. (Notes page 35.) Ayios Georghios, mentioned by witness 8 is not mentioned by witness 13. (Notes page 52.) Now, the Court commenting on the evidence at page 121 says—I am reading from the Judgment at page 121 : “ 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
40 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.”

In our respectful submission this statement by the Court is unjustified, in view of the many contradictions which I have only briefly reviewed. But the Court goes on to say : “ Nevertheless, as it has already been stated, it would not have been easy for the Court to decide this case only
50 on the oral evidence if no corroboration from other sources was forthcoming.”

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Now, my Lords, if there is one feature of the evidence for the Plaintiffs as compared with the evidence of the Defendants it is this, that whereas the evidence of the Defendants is at least consistent, the evidence for the Plaintiffs is full of contradictions and a fair comparison should have been that the evidence for the Defendants is a consistent story while that of the Plaintiffs is not.

There are another few submissions to make on the oral evidence and when I make my comments as regards the documentary evidence, I will make my submission.

Now, the remaining points that call for some comment on the oral evidence are these: The first witness tells the Court that Galata takes its water from Kapadhoka and Frantziko. He agrees that from Kakopetria downwards the river is called Karkotis, and that the two tributaries that join at Kakopetria are called Karvounas and Karkotis. (Page 12.) He was in the habit of diverting water ten times every year, but no owners at Kakopetria saw him. (Notes pages 13 and 14.) No owners at Kakopetria ever saw him. He does not remember if Ayios Nicolaos dam is above or below the Chrome Company's Works. (Notes page 14.) This indicates that he does not know the locality. He does not know if Kakopetria people had any system for the distribution of the water. The witness goes on to say that he never visited the source or sources of the water. (Notes page 15.) And he denies the existence of any springs on private lands. This is paradoxical, my Lords, in view of the finding of the Court that such springs did exist. Witness 2 was never a witness of the measuring at Kakopetria of the shadow of any man. (Notes page 17.) And what he knows is from hearsay. He never went to Kakopetria. He only diverted the water once at Ayios Nicolaos dam, he says he did not know what man protested. (Notes page 18.) He was not seen on any other occasion by Kakopetria people above Kakopetria. He says the right of irrigation is not personal but is attached to the lands. (Notes page 18.)

Chief Justice : What point do you make of that ?

Mr. Houry : I will submit it in a minute. If this witness is to be believed in this last assertion, the value of the cochans, title-deeds, would be completely destroyed, since they signify ownership of water by hours, in respect of the ownership of land. Witness 3 pretends that the Kakopetria people take their water on Fridays up to the time the shadow of a man is 7 feet, he informs the Court that Kakopetria takes the water from the rising of the Pleiades from June to October. (Notes page 21.) This witness mentions nothing about Orion's Belt, he does not mention what Kakopetria takes its water from October to June. During his 15 years as a water guard at Frantziko he was seen by three persons only, and he names these three persons as being Nicolas Ioannou, witness 2 for the defence, Haralambos Violaris, witness for the defence No. 13, and Alexandros Savva, witness 9 for the defence. (Notes page 22.) He then says that he measured the shadow at Frantziko and he was seen by Yannis Papa Antoni. (Page 22.) He measured several times and he was always seen by the same man. (Notes page 22.) He never measured the shadow at Appliki but he did at Karidhi dam. He does not remember who saw him do so. (Notes page 22.) He diverted the water at Ayios Nicolaos dam but he does not know by whom he was seen.

[sic 1]

Now, I need only mention here that these three witnesses whom he mentions as having seen him, three witnesses for the defence, all deny his story completely. Witness 5 says he was a water guard and he was seen by several people divert the water at the Frantziko dam. (Notes page 26.) Witnesses 6 and 7 say that they never diverted the water at the Frantziko dam, but always from the sluice, and the sluice is about one mile from the Frantziko dam. This appears, my Lords, from pages 29 and 34 of the notes. In any event, my Lords, of the many people who are said to have seen this witness 5 divert the water at Frantziko, Karidhi and Appliki, none were called to corroborate him. Witness 6 knows the Karkotis river, and that at the junction of the two rivers, Ayios Nicolaos and Karvounas the river Karkotis is formed. (Page 28.) He never diverted the water at Frantziko. (Page 29.) Over a period of 15 years he says he diverted the water on 30 occasions, that is to say, at the rate of twice a year, and he was only seen by four people who were called as witnesses, but none of whom saw him divert the water. This appears in the notes at page 29. Witness 7 speaks of Karvounas and Ayios Nicolaos rivers, at page 30: "We," Petra people, "take this water from the sluice at Evrychou, Korakou, Tembria." And he calls the Ayios Nicolaos river Klarios. (Page 31.)

Mr. Clerides : It is the ancient Greek name for the river, Klarios or Kariotis, mentioned by Euripides.

Mr. Houry : Is it? He denies that there are springs on private properties that supply the river with water. (Notes page 32.) This indicates total want of knowledge of local conditions. He kept no notes of how often he visited the locality. (Notes page 32.) He visited the spot from 1909 and he says ten or fifteen times each year he used to take up duty at Vassiliko. (Page 32.) Your Lordships will remember that Vassiliko occurs just before the junction of Karkotis, and taking duty at Vassiliko is not concerned with our present enquiry because we are not concerned with that dam. On Sundays he used to go to Ayios Nicolas and Frantziko dams. (Page 33.) Though he kept guard for 25 years he remembers no other name but that of Yannis Papa Antoni. (Notes page 33.) In one passage he says that he waited at Vassiliko dam until the Kakopetria guards took the water. But that is funny because the Kakopetria water guards were not interested in the Vassiliko dam. Kakopetria, it will be remembered, never took water from the Vassiliko dam. For 25 years only two men saw him. (Page 33 of the notes.)

We come to witness 10, who says that Galata takes its water from Kapadhoka and Vassiliko. (Page 47.) He was never present when Kakopetria diverted water at the rising of the Pleiades. (Page 47.) He says that when he diverted the water he was alone. (Page 48.) He agrees with the name of Ayios Nicolaos, it is Karkotis. He cannot say if the Pleiades are visible on the 19th May, but he insists that Kakopetria is only entitled to irrigate from the rising of the Pleiades.

Witness 12 does not know the names of the Kakopetria people who saw him divert the water. (Page 51.)

Witness 13 says that Kakopetria, Korakou and Evrychou are entitled to divert the water at the rising of the Pleiades. (Notes page 52.) He

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was never at Kakopetria at the rising of the Pleiades. (Page 53.) He does not know if the rising of the Pleiades in June is simultaneous with the sunrise. (Page 53.)

Witness 14 says Petra people take the water until the rising of the Pleiades up to the 28th August, and until the rising of Orion thereafter. (Notes page 54.) The distance from Petra to Ayios Nicolaos is 12 to 13 miles according to him. Kakopetria is entitled to divert the water at the rising of the Pleiades or Orion, as the case may be. What happens to the water having to run to Petra from the rising of Orion, from Kakopetria? All water leaving Kakopetria reaches Petra. Witness 14 10 never diverted the water above Kakopetria. (Page 56.) He does not even know the names of the tributaries above Kakopetria. (Page 57.) This completes my comments on the oral evidence.

The Court rose at 12.55 p.m. and adjourned to 4 o'clock on the same afternoon.

4 p.m. Same afternoon.

Appearances as before.

Mr. Houry : May it please your Lordships. I shall now, with your Lordships' permission, make our submissions concerning the admission of what we believe to be inadmissible evidence.

Chief Justice : Just before you get on to that. Have you got a sheet 20 of the survey map which will show the river above Kakopetria?

Mr. Houry : Yes.

Mr. Clerides : There is in the Exhibits, my Lord, Exhibit 1.

Chief Justice : Yes, but there are three sections, 1A, 1B and 1C.

Mr. Houry (handing a sheet to the Court) : This is on a larger scale, but your Lordships can keep that if it is useful.

Chief Justice (to Mr. Houry) : You, at any rate, produce Sheet 19, I see it is called, of the survey map. You have seen this, I suppose, Mr. Clerides?

Mr. Clerides : Yes, I have seen what is in Court. That must be the 30 same, my Lords.

Mr. Houry : We produce it naturally for the convenience of your Lordships, but it forms no part of the evidence, because I shall soon make some submissions that the survey maps do not constitute evidence as regards the name of the river, my Lords.

Chief Justice : Yes, let me see the sheet which is an exhibit which shows the river above Kakopetria.

Mr. Houry : It is a partial plan, my Lords. It indicates from Ayios Nicolaos river, but it is called here Koutsoulas.

Mr. Clerides : Well, that is the name up in the mountains, and then 40 it comes down.

Chief Justice : Where is Kakopetria?

Mr. Clerides (showing on the plan) : This is Kakopetria village.

Mr. Houry (showing on the plan) : That is Ayios Nicolaos river, which is called Kariotis Potamos, and it has two tributaries right above which are called Arghaki.

Chief Justice : Is Karvounas here ?

Mr. Houry : No, it does not appear but the junction is here.

Mr. Clerides : No, just below the village, that empty space there is the village of Kakopetria, if you follow the line of the river, below the river they join.

Chief Justice : Does it show that, Mr. Clerides, can you show us ?

10 *Mr. Clerides* : Yes. It goes on afterwards. The village of Kakopetria too, is not shown here, but if we get the other sheet we can find it.

Mr. Houry : There are three sheets, the numbers are 37/21, 37/29 and 37/37.

Chief Justice : Can you get them bound on to some cardboard, a big sheet, so that we can look over them ?

Mr. Houry : Yes, my Lord.

Chief Justice : It will be enough probably if you do it before to-morrow morning, because if it is going to be argued that there is a river called the Karkotis river which is higher up than Kakopetria itself we had better
20 see a map of the area.

Mr. Clerides : Yes, my Lord. I am afraid we shall have to send somebody now because they will have to prepare a copy, a sun-print copy, and unless we send somebody now we shall probably not be able to have it by to-morrow morning.

Mr. Indianos : May I go and see to that, my Lord ?

Chief Justice : Yes, we shall be very grateful to you if we can have it to-morrow, if they can have it on one large sheet or else pin it to some large cardboard so that we can examine it in more detail, that would be a help.

30 Now, I think, Mr. Houry, you were going to talk about documentary evidence.

Mr. Houry : Yes, with one small explanation. In the morning I was not quite correct when I told your Lordships that if the village boundaries of Kakopetria were modified, the area under cultivation would be increased. I went wrong. The area under irrigation from these four dams cannot be increased ; if it is modified so that other lands be included further down then it may well be that Kapadhoka and Vassiliko may then begin to irrigate the new acquired Kakopetria lands, the new lands which would become Kakopetria lands by reason of the modification of the boundaries,
40 but the fact remains that the four dams in question can never irrigate a larger area of land than the one I mentioned in the morning.

Chief Justice : And that area is about . . . ?

Mr. Houry : About 300 donums, it is between 240 and 320 according to the evidence, so if we take the mean figure it may be round about 280 donums.

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Now, I would pass on to the documentary evidence, my Lords, and our submission is that the trial Court admitted inadmissible documentary evidence and the documents admitted have influenced the decision of the Court, the Court was able to throw into the balance the weight of what is supposed to be documentary evidence in favour of the oral testimony submitted by the Plaintiffs, and the Court was led to make a finding on the issues before it.

In my submission, my Lords, the following exhibits were wrongly admitted, 1 (A), 1 (B), 1 (C). These are the three survey plans. Then Exhibit 2 was also wrongly admitted. It is the Field Book. Exhibits 2 (A), 10 2 (B) and 2 (C) are also wrongly admitted, in our view, because they are part of Exhibit 2, they are pages taken from Exhibit 2. And then Exhibits 4, 5 and 6, they are the exhibits that refer to the instructions which led Salim Effendi to make a report and to make a sketch. These also, in our humble submission, were wrongly admitted.

Chief Justice : These exhibits include the report and the sketch ?

Mr. Houry : Yes.

Chief Justice : 5 is the report and 6 the sketch ?

Mr. Houry : Yes, my Lord, 5 is the report and 6 the sketch.

Then 13 (A), 13 (A-2), 13 (B-2), 13 (C-2) are also, in our submission, 20 wrongly admitted, and I may remind your Lordships that these three exhibits, 13 (A-2), (B-2) and (C-2) are entries again taken from Exhibit 2 the Field Book. And Exhibit 16 is a certificate dated 27th September, 1935, I think a village certificate. This also, in our submission, was wrongly admitted.

Now, as to the plans, in tendering these plans we put in an objection to the trial Court, and the proceedings in consequence of the objection are to be found at pages 37 and 38 of the notes. The Court ruled that the plans were admissible under Law 14 of 1946. "Production admitted under section 17 of Law 14 of 1946." Now, though they were admitted 30 under that law, my Lords, the survey maps in question are purported to have been made under Law 5 of 1880, the Cyprus law file of 1880. And I may refer your Lordships particularly : These are Exhibits 1 (A), (B), (C), the first three plans, survey. I think the admission, my Lords, is made under section 4 (1).

Chief Justice : The admission ?

Mr. Houry : The admission by the Court, the admission of the plans into the evidence is mentioned in the notes as having been allowed under section 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 40 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."

Now, the maps are neither registered nor are they an entry nor do they constitute a record.

Chief Justice : You say they were made under Law 5 of 1880 ?

Mr. Houry : Law 5 of 1880, and I would respectfully invite your Lordships' attention particularly to paragraphs 1, 3, 8, 9, 10 and 12 of that law.

Chief Justice : What does it say ?

Mr. Houry : The object of the whole law, my Lords, was to enable . . .

Chief Justice : Just let me see it, will you ?

Mr. Houry : Yes. The object of the law was to enable the fixing of the boundaries for the settlement of land revenue. And the law goes on to say that the fixing of boundaries does not debar the person interested
10 from claiming his rights.

Chief Justice : Where is that ?

Mr. Houry : I have not got the law. Yes, section 12, my Lords. It confers no authority or commission to fix names of rivers, so we see, my Lords, that the maps do not establish any finality on the one hand, and they do not confer any commission to make enquiries and give names of rivers, and the purpose that my learned friend produced these maps was to prove that Karkotis river extends upwards to Kakopetria.

According to the Law in England a Crown survey if made under proper authority and produced from public custody is admissible as a
20 public document on questions of boundary. Provided that evidence is forthcoming *aliunde* that the survey was made under due authority. This statement of the law is to be found in volume 3 of the Laws of England, Hailsham Edition, page 167, paragraph 293. "A Crown survey, if made under proper authority, as for example, pursuant to an Act of Parliament, and produced from the records of the Court or other proper custody, is also admissible as a public document in questions of boundary, even where the commission under which it was made is lost, provided that evidence is forthcoming *aliunde* that the survey was made under due authority."

30 The Acts under which ordnance survey was made in England contained no provisions for settling boundaries. An ordnance map is not admissible either as a public document or as evidence of reputation to show the boundaries of a parish or a village or between the lands of adjoining owners. The same volume of the Laws of England, at page 168, paragraph 294 : "Where a survey of the boundaries of a manor purporting to be made under stat. *Extenda Manerii* which gave no power to define boundaries of manors, was held not to be admissible as evidence of boundary, either as a public document or on the ground of reputation." The same page, my Lords, footnote (b). But although the document may
40 be properly of a public nature, it is not admissible to prove any facts therein stated which do not fall within the scope of the writer's authority. This statement occurs in volume 13 of the Laws of England, page 669. I am reading from that page : "But although the document may be properly of a public nature, it is not admissible to prove any facts therein stated which do not fall within the scope of the writer's authority."

So the conclusion, my Lords, is this. In reading these plans the trial Court finds that these plans corroborate the evidence of the Plaintiffs' witnesses, that Karkotis extends above the bridges towards Troodos. That is their judgment. Now it is a fact that these plans which are

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submitted do describe the river which the witnesses on both sides agree is constituting the Ayios Nicolaos river, and yet the plans do not make any mention whatsoever of the Ayios Nicolaos river at all. So there is possibly another section in the Evidence Law of 1946 which the Court did not seem to rely on for the admission of these plans, it is section 4. Section 4 (1) (a) lays down the conditions which have to be satisfied before records of the kinds mentioned therein can be admitted in evidence. And subsection (1) (a) has two subsections, but the Court in admitting these plans did not rely on this section. Now, subsection (2) requires as an addition for admission of these documents that they should be prepared in the performance of a duty to report information to him, to the maker, by a person who had, or might reasonably be supposed to have, personal knowledge of these matters. 10

Chief Justice : Where is this ?

Mr. Houry : Subsection (2) : " 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." 20

I need only remind your Lordships that the Court never directed its attention to these conditions in admitting Exhibits 1 (A), 1 (B) and 1 (C), and it would, in my submission, be impossible for an appellate Court to rule that these conditions were satisfied for the admission of these documents.

I will now pass with your Lordships' permission, to another exhibit, to Exhibit 2. In dealing with this exhibit, my Lords, I will be dealing with Exhibits 2, 2 (A), 2 (B), 2 (C), 13 (A-2), 13 (B-2) and 13 (C-2), all the others are entries in Exhibit 2. All the other exhibits I have just mentioned are nothing but entries which occur in Exhibit 2. 30

Chief Justice : What is this book ?

Mr. Houry : This book my Lords, is supposed to be a book in which certain enquiries made in 1893 at Petra—and I stress the word at Petra, because the book does not concern itself with anything beyond Petra—it is a book to which great significance was given in the trial Court, and I will show, I will attempt to show to your Lordships that it is a book which was never relied upon by the L.R.O. office and it is a book which should never have been admitted in evidence, it is nothing but hearsay.

Chief Justice : Tell us more about it, you say that it concerns enquiries made at Petra in 1893 ? 40

Mr. Houry : 1893, of the supposed water rights of the Petra people.

Chief Justice : And who made it ?

Mr. Houry : It was made by unknown people. There is no evidence as to who prepared these records, who the maker is, is unknown.

Now, this Exhibit 2 was again admitted, against our objection, by the Court, and the admission is recorded at page 37 of the notes. The Court does not state on what grounds the admission was allowed. There

is nothing at all in this field book to show that any non-Petra people were ever consulted. It is supposed to have been prepared at Petra, locally. This statement occurs at page 37 of the notes. To a question how it acquired the name field book, the answer was : because it was prepared in the field, locally, that is why they called it so.

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Now, my Lords, here, as the grounds for admitting it are not known, it is difficult for us to say whether the admission was based on Law 14 of 1946 or whether it was admitted under the English Law of Evidence as a public document. But if it was admitted under Law 14 of 1946 we
10 should have expected the trial Court to state the reason why it was admitted.

Griffith Williams J. : You said a moment ago that it was not taken any account of by the Land Registry, but I see here : " On the basis of the field book we prepare the records called Land Registers. It is on the basis of this book that we issue the title deeds."

Mr. Houry : I propose to deal with it subject to your Lordships' permission on that very point. That was a statement that was made, as I am aware, by the L.R.O. clerk who produced it.

I am now dealing with its admission, and my submission is, that this
20 admission was enigmatic, we do not know why and on what authority, and if the trial Court had in mind that it was admitting it under Law 14 of 1946, we should have expected the trial Court to indicate its reasons in the way that it did indicate its reasons in admitting Exhibits 1 (A), (B) and (C). So quite possibly the admission was made under the general principles governing the admission of documents in English law and it is there where I would like to make my submission.

Griffith Williams J. : But why should they go to English law when we have got the local law ? Why should you suggest that the Court must act under English law ?

30 *Mr. Houry* : Because there is a section in the Law of 1946, section 4 (6). There is a saving clause that enables Courts to admit documents.

Griffith Williams J. : Pedigree ?

Mr. Houry : You see, my Lords, how I read it : " 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."

Quite possibly, I say, it is impossible to know exactly what passed
40 through the mind of the Court in admitting this field book, but if it had a good reason behind it in doing so under our Evidence Law we would have expected the trial Court to say why they admitted it, but undoubtedly the trial Court must have been in great difficulty in admitting it under our law, because of section 4 (1) (a) (ii) ; there it requires, before the Court can admit the field book under that specific section it should be satisfied that it was recorded by a person in the performance of a duty, to record information supplied to him by a person who had or who might reasonably be supposed to have personal knowledge of these matters, and in view of the impossibility of evidence of this kind being forthcoming,
50 the trial Court said " we admit it."

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Griffith Williams J. : Would it not come under the proviso ?

Mr. Houry : My learned friend indicated to me for submission to your Lordships section 3 of this same law, that does bring into play the English Rules of Evidence in Cyprus. I will read that section : "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 proceedings, 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." So we say that if we can make a correct guess of what the trial Court had in mind that guess would be that in admitting Exhibit 2 they were doing so under the English Law. Under the rules of the English law. In England, my Lords, I am reading from Phipson on Evidence, 7th edition, page 345, it is a particular passage the Court refers to in admitting other documents, not this one. "The test of publicity as put by Lord Blackburn is that the public are interested in it and entitled to see it, so that if there is anything wrong in it they would be entitled to protest. In that sense it becomes a statement that would be open to the public to challenge or dispute, and therefore it has a certain amount of authority . . . The whole gist of the rule as to public documents is that the publicity must be contemporaneous, and publicity means such publicity as would afford the opportunity of correcting anything that was wrong." 10 20

Now, this is a necessary condition before a document, a public document, could be admitted in evidence in England as a public document, and that principle is quite understandable and the reason behind it is perfectly sound, because the very fact that it is continually open to the public to challenge and the fact that it was not challenged for years would indicate that though hearsay it be, it still should form an exception to the hearsay evidence rule and therefore it is admissible.

Griffith Williams J. : Wouldn't that also cover Exhibit 1 ? 30

Mr. Houry : Exhibit 1, my Lords, is done under a specific law, if I may respectfully recall this point, under a specific law, that does not establish its finality at all, and it confers no commission on the maker to enquire and record names of rivers, because Exhibit 1 was definitely tendered in evidence for no other purpose than to prove the name of the river Karkotis, when it extends beyond Kakopetria.

Chief Justice : Is it in evidence when Exhibit 1 was made ?

Mr. Clerides : Between 1924 and 1928.

Chief Justice : And by two . . . ?

Mr. Clerides : By two persons, by one Tsaros, surveyor, and by 40 another person, it was mentioned in the evidence. One is Paraskevas and the other a Turk.

Mr. Houry : Now, my Lords, these are the conditions for admitting a public document. I will cite two leading cases, it is the case of *Sturla and others v. Freccia*. It is reported in the Law Journal for 1881, Chancery Division, volume 50, at page 86. I will not annoy your Lordships by reading the whole report, but a few passages in it would indicate more or less the principle that decision settles. Reading from page 89, column 1.

The report goes on to say : " It does not appear that any particular rules were prescribed to them as to the kind of information which they should collect ; still less as to the evidence which they were to require to substantiate such information. What the law of Genoa as to legal evidence may be we do not know, and certainly there is nothing here from which we can be entitled to assume that it is the same as the law of England upon matters of this kind. Whatever it is, there is nothing to lead to the conclusion that, in the discharge of this particular duty the persons composing the sub-committee of the executive Government of Genoa

10 were bound to confine themselves to any particular description of evidence, whether of that kind which the law of Genoa would be satisfied with in judicial proceedings or of the kind which the law of England requires in such proceedings." Then from the second column of page 89 : " The report which they made contains the history of what they have collected, in some way or other, as to the life of this gentleman. I have no doubt whatever that they received information which they thought was correct upon all the points comprehended in that report, but whence that information was received does not at all appear : certainly it does not appear that it, or any part of it, was received from any member of

20 Mr. Mangini's family." That was a case of pedigree, where declarations made by relatives would be admissible and as the report did not record the source of information it was ruled out of evidence. There is a lengthy judgment delivered by Lord Blackburn and it starts from page 93, and ends at page 98, and in my humble submission this judgment of Lord Blackburn's has in it a complete survey, a complete review of the law on the question of admission of public documents. I need not read the whole judgment, I shall read from page 96, column 2 : " Supposing this enquiry had been carried on under the authority of the English Crown, and the English Crown had required of a magistrate that some confidential

30 report should be made, it would not be public in one sense, but it would be public in this sense, that it would concern the Crown, and, from common respect for the Crown, one would suppose that what the magistrates told the Queen would be what they firmly believed and considered that they had good reasons for believing ; but I do not think it would come within the sense and meaning of the rule that a public document would be admissible as evidence, on the ground that a public officer, in making the statement for the public, was likely to speak the truth and must be presumed, *prima facie*, to have known and to have spoken the truth. I am not aware of any decision which says that, in such a case as I have

40 supposed, the document would be received. I do not believe anyone has ever tried to put in such a document, and therefore I do not think there is or can be any authority to the contrary. Nevertheless that would illustrate the principle."

The other case is the case of *Mercer v. Denne*. It is reported in the Law Journal for 1905, volume 74, Chancery Division, page 71. I am reading from page 76, His Honour Judge Farwell : " In my opinion these documents are not admissible in evidence, I adopt the ruling in the Judgment of Lord Blackburn in *Sturla v. Freccia* where he says : ' I understand a public document there to mean a document that is made

50 for the purpose of the public making use of it, and being able to refer to it. It is meant to be where there is a judicial, or quasi-judicial, duty to inquire, as might be said to be the case with the bishop acting under

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the writs issued by the Crown. That may be said to be quasi-judicial. He is acting for the public when that is done ; but I think the very object of it must be that it should be made for the purpose of being kept public, so that the persons concerned in it may have access to it afterwards.' ”
And further down : “ The test of publicity as put by Lord Blackburn is that the public are interested in it and entitled to go and see it, so that if there is anything wrong in it they would be entitled to protest. In that sense it becomes a statement that would be open to the public to challenge or dispute, and therefore it has a certain amount of authority.”

And at page 78 the judgment goes on : “ The public had no voice 10
in the matter, and the whole gist of the rule as to public documents is, that the publicity must be contemporaneous, and publicity means such publicity as would afford the opportunity of correcting anything that was wrong.”

Now these, of course, are the principles of English law. When we apply these principles to the facts before us what do we see ? We see the field book prepared in the year 1903 at Petra, there is nothing whatsoever in the evidence to show that the Kakopetria people were ever consulted or that they knew anything at all about what was going on at Petra. And because the Kakopetria people had no opportunity of 20
challenging the correctness of the field book in our submission that field book does not constitute any sort of evidence against the Kakopetria people. We do not know how the enquiry was conducted by the maker of the field book, of Exhibit 2, we do not know what the source of his information was, whether it was direct, credible evidence or whether it was based on hearsay. And for these reasons, my Lords, I shall invite your Lordships to decide, to rule, that Exhibit 2 was wrongly admitted in evidence.

Chief Justice : You said it could not be under the local Evidence Law, Cyprus Evidence Law, section 4 (1) (a) (ii) ? 30

Mr. Houry : Yes, my Lords.

Chief Justice : Will you explain why it could not ?

Mr. Houry : Because in order that it should be admitted under that section it must appear by positive evidence that the book was prepared in the performance of a duty to record information supplied to the maker by a person who had or might reasonably be supposed to have personal knowledge of these matters. And as I have submitted already, there was no evidence on which the Court could make a finding of this kind.

Chief Justice : Don't you suppose that it probably was made, by whoever made it, in the performance of the duty to record information 40
supplied to him by a person who had, or might reasonably be supposed to have, personal knowledge of these matters ?

Mr. Houry : Yes, but you see, my Lords—I will come later on to my comments on this book, that out of 250 pages, I believe, only in 92 cases were the entries found to be correct, while in 140 cases they were rejected.

Chief Justice : It is quite true they may have been wrong, but that does not show it is not admissible in evidence. I am not saying that it is, I want to understand your argument.

Mr. Houry : My submission is just this, that in order that it should be admitted in evidence certain conditions have to be fulfilled. One of these conditions is that the trial Court to whom the evidence is tendered should be satisfied by positive evidence that it was made by a maker in the performance of a duty. First of all, it must appear that it was the duty of the man who made it to do it and it should record information supplied to him by a person who had or might reasonably be thought to have a personal knowledge of these matters. There is no evidence whatsoever of who the informants were of that unknown maker. We have 10 unknown informants and an unknown maker of the field book.

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Chief Justice (to Mr. Clerides) : You might not be going to rely on that section, I do not know if you are or not ?

Mr. Clerides : I will rely on that section.

Chief Justice : Because if you are not we may as well not waste time on it, but if you are, we may as well hear what *Mr. Houry* has to say on it. (*To Mr. Houry*) : At any rate, you say that whether the field book was or was not in fact a book of that kind, there was no evidence to show that it was ?

Mr. Houry : That is so, my Lord.

20 Now, I come to a criticism of this field book. The witness, the L.R.O. witness who produced it, tells us that the field book is the basis of registration in the Tapu Register, he says that at page 49 of the notes. To a question whether he could show whether any registrations were conducted on the exclusive authority of the field book, he points out Registration 2593 : I am reading from the notes : " Q. Please show us these registrations without any local enquiry whatsoever ?—A. Reg. 2593 is one of the cases where registration was made without local enquiry." He was there trying to convey the impression that Registration 2593 owes its authority to the field book. Then he goes on to say : " We had 30 some registers where this registration is shown but these registers are destroyed. They were very old prior to the field book. They proposed to make a new registration and at that time this book was prepared. *Court* : What I understand you mean to say that in the field book the registrations made are not altogether new but they may be a substitute of some old one ?—A. Yes."

So here he confesses that the entry, that particular entry which he was wanting us to believe that it owes its authority to the field book, is in fact derived from an old registration.

40 " *Mr. Houry* : It is very far from being a field book then ?—A. If there has been any inconsistency with any registration then they cancelled it. We had registrations before it no doubt."

Now here is an instance where this man concludes Registration 2593 is based on the field book and he is instantly discredited.

Griffith Williams J. : You mean to say 2593 was one of those registrations ?

Mr. Houry : Yes.

Griffith Williams J. : He does not actually say this, he says : " We had some registers."

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Mr. Houry : My question was : " Can you point out any registration which was made directly from the field register without any local enquiry ? " His aim was to show that the field book was acted upon without any further enquiry, and that was the question he answered definitely : " Q. Please show us these registrations without any local enquiry whatsoever ?—A. Reg. 2593 is one of the cases where registration was made without local enquiry."

Let us see what he says about this self-same registration in the following page of the notes : " Show us a registration taken directly from this book ?—A. 2593. Q. But 2593 was written afterwards ?—A. I do not know." 10

So it appears, my Lords, to be fairly certain that no registration was ever effected on the sole authority of the field book, otherwise the Tapu register, the register of immovable property would mention in the column, there is a special column in the Tapu register entitled : " Reason for grant of title." It is a special column therein for the indication of the reason why a title was issued, and in not one single instance were the L.R.O. clerks who were called to give evidence able to show us that any registration was effected on the sole or indeed on any partial authority coming from the field book. The field book, my Lords, contains 240 pages. 20

Chief Justice : Do you mean 240 written on or some written on and some not ?

Mr. Houry : Some written and some not. The written and unwritten pages number 240.

Chief Justice : Do you know what the printing of it is ? It is in Turkish, what does it say ?

Mr. Houry : My Lords, I read the Arabic script . . .

Chief Justice : It is given in the notes, is it ?

(Translation at the end of notes looked at.)

Chief Justice : I just want to look in case there is any point. I have no idea whether there is anything to show what it is about. We begin from the wrong side as we call it ? 30

Mr. Houry : Yes, from right to left, my Lord.

Chief Justice : 13 (B-2), that is that one which is translated there, and what is struck out here is the boundaries, north, east, south, west. But these things are all in.

Well, this bears on the point to this extent, that the printed part of it gives the information that whoever it was who made this field book was supposed to go and collect information from people who could tell him. Is that a fair construction ? 40

Mr. Houry : This is, of course, an assumption which probably the Court made without having adequate evidence.

Chief Justice : I know there is no evidence, but when you see a printed book or at least a book of partially printed forms and the printed part says, category, kind of property, reasons for issuing title deed and details of that sort, you would suppose that that is the kind of information

that he has got to get and then he puts in 2½ hours of running water for so many days, etc. The suggestion is from the form that that was the sort of information that whoever was making the book was supposed to go and collect, isn't it?

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10 *Mr. Houry* : Yes, but as your Lordships will see, the field book there, in the entries made by handwriting states "one hour every twenty-two days, from the running water of the Karkotis river of Troodos from the division called Moulla Moustafa." We should remember this is, *prima facie*, hearsay evidence and it will be rejected according to every rule of evidence. If I am an inhabitant of Kakopetria and a man in Petra would ask the L.R.O. to make a local enquiry into his own rights and the local enquiry is held at Petra the local enquiry would not affect me and would be hearsay, and as such it would be rejected in all Courts.

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Chief Justice : You being a man of Kakopetria ?

20 *Mr. Houry* : Yes, Kakopetria. There may be some few instances in which they would be adopted as documents if they were done as the result of public inquiry and withstood the test of time, and none of the Kakopetria people who knew about this took the trouble to contest the entry made in the field book. In a case like that the Court would be perfectly right to adopt the book though hearsay, because it would be a public document made by the man who had to record this particular information as the consequence of a proper enquiry, and it was published and the people who were affected knew about it. But unless these documents are brought within the four corners of this principle which I have respectfully submitted, it cannot constitute evidence against them because it never loses its character of being hearsay.

Chief Justice : I was only asking this question about it in order to try and understand what it actually was, not on the question whether it was admissible in evidence or not.

30 *Mr. Houry* : It is just this, that my learned friends will make capital no doubt of the words "Karkotis river of Troodos." Now imagine the L.R.O. clerk making a local enquiry and getting the Petra mukhtar, the village commission, to certify to this man, to the L.R.O. clerk that the water is of the Karkotis river of Troodos without the Kakopetria people getting to know anything about it. In so far as the Petra rights are concerned, quite likely the L.R.O. clerk will accept that as quite sufficient for his own purpose, but could anybody say that evidence of this kind should be received or tendered against people at Kakopetria? It would indeed be most dangerous the moment these entries are not recorded,
40 are not known to the Kakopetria people, so as to challenge their authority.

Chief Justice : We have your argument on that point.

Mr. Houry : In that field book, my Lords, there are 240 pages, as I said, of which 142 were filled and, out of the 142 filled, 93 of the filled pages were cancelled; 93 of them were cancelled, this appears from the notes at page 86 : "*Mr. Houry* : There are 240 pages in all from which 98 are not filled, and 142 filled from which the 93 pages are cancelled."

The Court itself in the judgment that it rendered admits that in the field book there occur mistakes. The trial Court does not show what kind of mistakes occurred in the field book and why they were made.

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Griffith Williams J. (looking at field book) : Cancelled, see No. 636/93 ; 93 is the year, I suppose, it says it all the way through.

Mr. Clerides : The title deed has been issued for that.

Chief Justice : The cancellation means that it served its purpose, not that it is wrong ?

Mr. Clerides : Yes, my Lord, that a title deed is issued on the strength of the entry it is cancelling.

Mr. Houry : He has only to look at Exhibit 13 (C-2). I shall show how baseless his assertion is. The entry in the field book was made on the 16th August, 1893. The title deed at the foot of the column says 1883. 10 How could the field book get information for the issue of a title deed the moment the title is 10 years before.

Mr. Clerides : That is the previous registration which was lost. The 1883 registration was lost.

Mr. Houry : In every case there is a title deed which is previous in date to the entry in the field book. What is then the authority for issuing a title deed, is it the entry in the field book, or is it the very existence of another title deed which comes from the proper registers ? The witness who produced the book, Christakis Savvides, does not know who prepared it, and this appears from the notes at page 38, he only saw it three years 20 before the date of his evidence. He says it was prepared under Law 5 of 1880. And in another passage in his evidence he tells the Court that he does not know if it was kept under any law. (Notes page 37.) The Court again gave the witness time to obtain more information. Now, here, my Lords, with all due respect to the members who constituted the trial Court, I must say that that was an improper thing to do : a witness giving his evidence, and because he hesitates or he does not know, he is given time to go and prepare himself and come again and continue his evidence. He could only do that by adopting the proper rules, if he had anything which he could employ to refresh his memory. 30

Griffith Williams J. : It was just a formal witness, surely it was quite the proper thing to let him go and find the answers.

Mr. Houry : I beg your Lordships' pardon if I am supposed to have let anything drop from my mouth which made me say that the witness did anything wrong, I am only suggesting that the practice, as such, is not a thing which should be allowed, a witness who is giving evidence, when he hesitates, the Court should not be entitled to say : " You go and try and get more information," because that would destroy the safeguards which the law gives to the proper conduct of the examination and the cross-examination of a witness. 40

Chief Justice : Is there really any point to be made from that ? It is the business of the Court to obtain any information it can to arrive at the truth, and if by giving the witness a little time he would be able to tell them more than he would be able to tell them otherwise, why not ? There is nothing improper, assuming that people are honest. I mean, need we spend any time on it ? Need we give any weight to it ?

Mr. Houry : Very well. Now, the conclusion I will invite your Lordships to make as regards this field book is, that it is not a record

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on which the Land Registry Office rely. The Court cannot place any reliance on it. The finding of the trial Court that the field book was acted upon without any formalities and that certificates of registration were issued on the strength of this book is, in my humble and respectful submission, without foundation.

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10 This disposes of all the exhibits except 4, 5, 6 and 16. Now, coming to Exhibits 4, 5 and 6, these may be taken, my Lords, together. Exhibit 4 was put in in order to show, to indicate the sort of command that was given to Salim Effendi to prepare Exhibits 5 and 6, and if 5 and 6 are rejected it is certain 4 would have to be rejected. Exhibits 5 and 6 were produced, against our objection, by witness 9, and this appears from the notes at page 42.

Now, in admitting these documents the trial Court did not rely on our local Evidence Law, but it relied on the English Law of Evidence, because it cited Phipson on Evidence, 7th edition, pp. 344/345. This appears from the notes at page 42. It is precisely to these authorities that a little while ago I referred in making my submissions concerning the English principles on this matter, the matter of evidence of public documents, and I do not think it is necessary to repeat what I said then.

20 The witness, my Lords, who produced these exhibits did not know whether Yusuf Zia was head of the Land Registry Office or a Tapu employee. This appears at page 41 of the notes. "Exhibit 4. Q. Yusuf Zia was the head of the department?—A. I do not know. Q. Nothing addressed to Salim Eff.?—A. May be he got the instructions verbally."

Chief Justice : Who is Yusuf Zia, is it the person who made the record ?

Mr. Houry : No, he is the addressee of Exhibit 4. Now, Exhibit 4 was properly tendered by my learned friend to show what kind of commission . . .

30 *Mr. Clerides* : Exhibit 4 was put in at the request of my learned friend, Mr. Houry.

Mr. Houry : It was put in at my request to show what sort of commission Salim Effendi had.

Chief Justice : Who was Salim Effendi ?

Mr. Houry : Salim Effendi is the surveyor who prepared Exhibits 5 and 6. Yusuf Zia is the man who happened to receive a letter at the time, I believe 1901, from the Director of Surveys.

Mr. Clerides : No, it is 1893.

Mr. Houry : I beg your pardon. I will come to that.

40 Now, Exhibit 4 is very far from indicating that any commission was contained in it to Salim Effendi. Salim Effendi, the author of Exhibits 5 and 6, is not mentioned at all in Exhibit 4. While on this Exhibit 4, I would like respectfully to mention that Kakopetria is mentioned in it as being entitled to irrigate from the river. But significantly enough Kakopetria is not mentioned in that exhibit as being one of the villages that is entitled to any share of the water from any division.

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Griffith Williams J. : I do not quite understand that, it was mentioned as entitled to irrigate but not entitled to any share ?

Mr. Houry : Significantly enough the exhibit does not mention Kakopetria as being one of the villages that is entitled to a share in any division of the water. In any division of the water.

Chief Justice : Do you mean that Kakopetria is mentioned in the top list and not in the bottom list ?

Mr. Houry : Not in the bottom. Taking Exhibit 4 by itself, the inference would be that Kakopetria is entitled to use the water without any restriction. 10

Chief Justice : Isn't that a long jump ?

Mr. Houry : It may be, but that is my reading of the exhibit.

Chief Justice : Well, you can say, I suppose, that it was not among the villages to whom hours were allotted as shown in that particular letter, and into which the enquiry was to be made.

Mr. Clerides : Well, my Lords, " an inhabitant of one of these villages gave a rough statement as to how this water is divided among these villages, the following." It is a rough statement given to the Director of Surveys as to the division of the water, and it does not include the first four villages. A rough statement by an inhabitant. 20

The Court rose at 5.25 p.m. for a short break.

5.50 p.m. Court resumes hearing.

Appearances as before.

Mr. Houry : During the little time that I was given my attention was drawn, my Lords, to a remark made by my learned friend Mr. Clerides that the entries in the field book were cancelled because registrations were made on the faith of these cancelled entries. This statement has no foundation, in my submission, and this appears clearly from page 99 : " *Re X'n by Mr. Houry* : In that field book several pages are noted in red ink obviously as being cancelled ?—A. Yes. Q. What does this 30 mean ?—A. That no registration was effected."

Chief Justice : All right.

Mr. Houry : I am still on Exhibit 4, as your Lordships will remember, and . . .

Chief Justice : Exhibit 5 is the important one.

Mr. Houry : Galata and Sina Oros are not mentioned in Exhibit 4. Now, Exhibit 4 is instructive, in our submission, in that it indicates how unreliable the registration of water claims are, since it mentions that whereas Linou is only entitled to 12 hours of water on Tuesdays and a few hours on Fridays, it has water rights to the extent of 81 hours. Now, 40 this is a statement coming from the Chief of the Land Registry.

Chief Justice : Is it ? Because it says at the beginning : " An inhabitant of one of these villages gave us a rough statement as to how the water is divided amongst these villages."

Mr. Houry : My Lord, surely you would not expect the Director of Surveys, the man who is the chief of all this department, when talking about a subject about which he is supposed to know more than anybody else, the registration of water rights, you would not expect us to say that he relied on an informal statement made by a villager, when he is talking about the number of hours for which Linou is registered there he is the chief and he is talking about something about which he is supposed to know more than anybody else, how many hours of water are registered in the name of Linou, and he says that for Linou 81 hours are registered, although Linou is only entitled to water on Tuesdays and a few hours on Fridays.

Mr. Clerides : Eighty-one hours on Tuesdays.

Mr. Houry : Perhaps *Mr. Clerides* may be able to explain that Tuesday does contain 81 hours ?

Griffith Williams J. : It may be from different sources, perhaps that would explain it.

Mr. Houry : Now, the commission to Yusuf Zia is to be found in the last paragraph of that Exhibit 4, and the last paragraph is important because from this commission we shall be able to judge—if of course the other exhibits are to be admitted in evidence—what indeed was the commission of the person who was to make the report. These are the words : “ Please make a list of water other than flowing from sources and running through sluices.” A list of water. This is the whole mission with which he is entrusted. Yusuf Zia. And this letter is dated 11th August, 1893, and is signed by the Director of Surveys.

Now, we come to Exhibit 5. Exhibit 5 is a report by Salim Effendi addressed not to the Director of Surveys, the writer of Exhibit 4, but to the Registrar General.

Mr. Clerides : It is the same person.

Mr. Houry : He may be. I do not know, a change of title . . . And it is dated 10th August, 1901, eight years after the date of Exhibit 4. Eight years. It opens with this significant passage : “ In compliance with your instructions respecting the enquiries to be made to the taxims (divisions) etc. of the running water of Petra described in papers L.E. 164/900 ”—it is clear that this report has no connection, there is no nexus of any sort between it and Exhibit 4. Exhibit 4 bears No. 636/93, Exhibit 5 is in response to L.E. 164/900. Exhibit 4 refers to water at Flassou, Linou and Katydhata. Exhibit 5 refers to instructions concerning Petra.

Now, the significance of not connecting Exhibit 5 with Exhibit 4 lies in that the Plaintiffs are not able to prove any commission given to Salim Effendi to prepare Exhibits 5 and 6. And therefore the inadmissibility of these documents is doubly clear. For it cannot be predicated of them that they were prepared by Salim Effendi in discharge of a legal duty.

Chief Justice : He refers to instructions ?

Mr. Houry : Yes. “ In compliance with your instructions respecting the enquiries to be made to the taxims (divisions) etc. of the running water of Petra.” My Lords, it is important to remember it only refers to Petra.

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I now pass on to the construction of Exhibit 5 and on the assumption that your Lordships will read it in evidence, I have to make the following submission. It appears from the first paragraph that the sketch, that is Exhibit 6, was prepared at Petra. Let us note the words, I am quoting: "When I was at Petra village I have first drew up a sketch." The quotation finishes, and this appears at page 2 of Exhibit 5 (p. 262). The inference is that he obtained all his information in the preparation of that report and the sketch from Petra people. According to Exhibit 5, page 3, paragraph b (p. 263): Petra takes the river water from certain channels, sluices and dams marked 19, 17, 26, 27, 25 and 28. None of these dams marked by Salim Effendi have any connection with the Kakopetria dams which are now familiar to us. The divisions of water described at pages 3 and 4 of Exhibit 5 (p. 263) are, in my submission, impossible to understand. The statement already familiar to us pronounced by one of the witnesses that the water is attached to lands is repeated by Salim Effendi, at page 4 of Exhibit 5 (p. 264): "I beg to state that there are some lands which were left without water and some water left without lands, take for instance Hindi Effendi, Mulla Mustafa of Petra etc." And yet Salim Effendi says in his report, I am quoting: "There are some lands which were left without water and some water without lands." This exhibit throws light as to how the water at Petra came to be registered, it speaks that such rights were registered by the strength of the village certificates. Page 4 of Exhibit 5, paragraph 4 (p. 264): "by the strength of a village certificate in February 1883 under register 311, 312 and 313." That shows that they only relied on local evidence for the registration of the Petra water rights.

Chief Justice: What do you say it shows?

Mr. Houry: It shows, my Lord, that reliance for L.R.O. purposes was based exclusively on what the L.R.O. officials were told by the Petra local authority, the Petra mukhtar and azas.

Griffith Williams J.: That does not mean necessarily local, it may be anybody round there.

Mr. Houry: It only applies to Petra.

Griffith Williams J.: It didn't apply to Kakopetria as well?

Mr. Houry: By no means. By saying village authorities, I mean the village authorities of Petra. And naturally enough a man is always a bad judge of his own rights and of the extent of his own rights. We notice at page 5 of Exhibit 5 that the water of Petra has not been separately assessed for Verghi—it is the opening of the third paragraph at page 5 (p. 265): "Although the water of Petra has not been separately assessed for Verghi during the Tahrir Emlak it is perfectly clear that the value of the water is assessed with the lands which can be irrigated by this water, but notwithstanding to that the Mukhtar and the Commission of Petra have a village certificate on behalf of the villagers of Petra declaring that the water running to their village of Petra has never been assessed for Verghi and they agree that the value described in the attached V. Certificate may be assessed in every hour of water."

Now here we have, as late as 1901, a very significant fact that water was not assessed for this immovable property tax, that is to say, the Petra people were never paying any immovable property tax on their water.

Chief Justice : And what does that show ?

Mr. Houry : It is one of the factors that may be considered in testing whether the Petra people have water rights that extend beyond the village boundaries of Petra. It is one factor that the Court may look at.

Chief Justice : How does it help us in that ?

Mr. Houry : My Lords, it helps us in this. If the claims of Petra were unrelated claims to the water right up to Kakopetria and Troodos, one would expect that the authorities at the time would have assessed them in a manner that the Kakopetria and the other villages would know
10 that this water is assessed as belonging to Petra, and the very fact that there was no estimation made indicates that everything was done in a secret way in so far as the Kakopetria people were concerned. Nothing to stir up the curiosity of the Kakopetria people that here there is something which indicates even slightly that this water is claimed by another village.

Now I come to the reference that is annexed to Exhibit 5, Salim Effendi's report. That reference throws some more light on Salim Effendi's source of information, and it indicates that his informants did not possess first-hand knowledge. In referring to Appliki dam he describes it as Applitch. Page 6 of Exhibit 5 (p. 265). He refers to it as "of Ayios
20 Nicolaos."

Mr. Clerides : Appliki of Ayios Nicolaos because it belongs to Ayios Nicolaos Monastery. That Appliki channel was irrigating properties of Ayios Nicolaos Monastery sold to Kakopetria people on which the new Kakopetria was built. Appliki is the channel watering gardens of Ayios Nicolaos Monastery.

Mr. Indianos : Appliki is from the Latin and means an estate, a residing place. It is a word which is to be found in medieval documents, it is from "castra applicari," that is a residing place, an estate. It is to be found in the chronicles of Macheras and in Boustronios.

Mr. Houry : Now, my Lords, I thank my learned friends, but I would
30 like to submit that there is nothing in the evidence at all that supports his version that Appliki of Ayios Nicolaos refers to the property of the monastery. What Salim Effendi says is this : "No. 4 on the plan representing the dam of the channel called Applitch of Ayios Nicolaos," and in my submission Ayios Nicolaos here refers to the Karvounas river as being in his own idea Ayios Nicolaos river, because he refers to the dam.

Mr. Clerides : No, not to us who know the case.

Mr. Houry : Well, this is my contention.

Griffith Williams J. : Doesn't it refer to a number on that map ?
40 Can't it be seen from that ?

Mr. Houry : It refers to No. 4 on Exhibit 6. Exhibit 6 is before your Lordships.

Chief Justice : He simply says that in giving that name to that channel he has given the wrong name and the name which anybody who knew what he was talking about would have given it.

Mr. Houry : By no means, because it is accepted by both sides that that river is the Karvounas, or in other words the Garilli river.

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Mr. Clerides : It does not mean the Appliki of Ayios Nicolaos river, it means the Appliki that belongs to Ayios Nicolaos Monastery.

Mr. Houry : Now, my Lords, my learned friend wants to connect Ayios Nicolaos with the monastery, if we notice the words describing this dam which Salim Effendi used we read : " which takes the water exactly the same time as the above-mentioned channels," and in the above-mentioned channels he speaks of the Kakopetria people, he does not speak of the Monastery of Ayios Nicolaos.

Mr. Clerides : Ayios Nicolaos is within Kakopetria, it is in Kakopetria, it is not a village, it is a monastery within Kakopetria. The locality 10 Appliki is the present Kakopetria village.

Mr. Houry : Now, another mistake occurs—I am speaking of the mistakes which he makes concerning the matters in so far as we are concerned—it occurs at page 5 of Exhibit 5 (p. 265). He calls the Karvounas river Karidhi river, we have heard the Karvounas being called Garillis, but there is no word in the evidence that assigns the word " Karidhi " to Karvounas river. So we notice that to Salim Effendi the name Karvounas river was unknown, and he gives to that river known as Karvounas the name Ayios Nicolaos in one place and Karidhis river in another place. This confusion is reflected in his sketch Exhibit 6 in 20 which Ayios Nicolaos and Karvounas rivers are not mentioned by name. He speaks of the Kapadhoka and Vassiliko dams as belonging to Galata village. I mentioned that in the morning.

Griffith Williams J. : Isn't that correct ?

Mr. Houry : This statement is correct. Exhibit 5 shows the spots from which Petra people take their water. It informs us in more than one place that the Petra people take their main water supply from the sluices of Evrychou and Korakou. Page 269. Nowhere does it show that Petra takes its water from any spot above Evrychou and Korakou dams. These are far below the dams from which the Kakopetria people take 30 their water.

Chief Justice : You say it does not show that Petra people take their ater above what point ?

Mr. Houry : Nowhere does it show that the Petra people take their water from any spot above Evrychou and Korakou, and those spots from which Petra people claim to take their water are far below Kakopetria. And at pages 7 and 8 of the same exhibit we notice that the Petra water guards divert the water from the sluices at Evrychou, Tembria and Korakou. Page 7 of Exhibit 5 (pp. 266 and 267) : " We notice again that the Petra water guards divert the water from the sluice at Everychou 40 Tembria and Korakou." " But as the main water of Petra and Elæa is taken from the sluices of Evrychou, Tembria and Kourakou at 7 feet shadow p.m. it reaches to the sluice No. 17a of the channel of Kousouliadi at 12 feet shadow p.m. and in consequence of that the water guards of Petra and Elæa erect a mark in Kousouliadi channel and let the main water which is taken from Evrychou, Tembria and Kourakou sluices run to Petra and Elæa until the shadow reaches to 18 feet, and when it reaches to 18 feet p.m. the whole of the water running to Pano Vlassou is turned down to Petra and Elæa."

Now, the description, my Lords, in Exhibit 5, page 5 (p. 265), of the way Kakopetria takes its water from the Frantziko dam does not agree with the testimony tendered on behalf of the Plaintiffs. I am reading from the reference, paragraph 1: "They take their water from the Karioti river and convey it through the aforesaid channel by blocking up the river, with brushwood and stone so much as the channel could carry." Now my Lords, why, why should this description be, since according to the evidence of the Plaintiffs our hours are limited from the rising of the Pleiades up to sunrise? None of the witnesses for the Plaintiffs speak
 10 about this method of taking water from Ayios Nicolaos river.

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Chief Justice : Where is the difference ?

Mr. Houry : My Lords, here the suggestion is that by using that method of taking up the water, stone and brushwood, it means that we are entitled to only the part of the water which such a method of blocking can secure. Now, does this tally with the supposed rights which the Kakopetria people have to take the water from a certain hour up to a certain hour? It certainly does not. It seems that Salim Effendi suggests some other method by which the water is taken by Kakopetria partially and the other part they are not entitled to touch, curiously enough, that
 20 is the inference to be drawn from his description as contained in the text of this paragraph, paragraph 1 of the reference. But what is more important for us to remember, my Lord, is this: It is that most, if not all, probably with one or two exceptions, of the witnesses of the Plaintiffs, tell us that the water into Kakopetria was never diverted from the Frantziko dam, from the dam which Salim Effendi describes, but from the sluice, so that the dam was always blocking the water and diverting it into the main Kakopetria channel, and that whenever the lower villages had to divert the water they did it from the sluice, not from the river bed but from the sluice which was at a distance of about a mile. So why
 30 should Salim Effendi dwell on this method of blocking up the river with brushwood and stone so much as the channel can carry? This again indicates the confusion under which Salim Effendi laboured in preparing his report, his reference, and his plan.

Now, Salim Effendi tells us in his report that the Kakopetria people are entitled to the water on Saturday, Sunday, Monday, Wednesday, Thursday in their village from the rising of the Pleiades until sunrise, and at page 9 of the same exhibit (p. 269) he speaks of the village of Kourou Vlassou being entitled to turn the water to Kousoulia channel and to take it to their village up to the time when Petra people have got the
 40 right to take it to Petra. These are other instances of confusion.

Chief Justice : There is some disagreement, is there, between these two things ?

Mr. Houry : It is inconsistent.

Mr. Clerides : No disagreement at all.

Chief Justice : Let us see what you say this disagreement is, we have got this paragraph on page 5 and then you refer us to another one on page 9.

Mr. Houry : Page 9 of the same exhibit (p. 269). He speaks of the village of Kourou Vlassou : "This water runs to Petra until the appearance

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of the star of Pleiades on Wednesday morning and at the appearance of the said star the people of Kourou Vlassou turn the water to Kousoulia channel and take it to their village up to the time when Petra people have got the right to take it to Petra."

Chief Justice: Anyway, you say what you read on page 5 is inconsistent with what you read on page 9 ?

Mr. Houry: Yes. Now, we come to Exhibit 16, my Lords, that is the last of the exhibits on which I propose to talk for the moment. About the inadmissibility.

Exhibit 16 was produced by witness 1 against our objection. (Notes 10 page 100.) It is a written consent in respect of the Kakopetria registration. (Notes page 100.) These are the circumstances of how Exhibit 16 was produced.

Now, my Lords, Exhibit 16 is a very recent exhibit, it dates from the 27th September, 1925, and the certification of the mukhtar and azas is at the bottom of that exhibit. Now, these are the circumstances of how this exhibit was produced: The witness for the defence produced Exhibit 10, title deed for a spring. (Notes page 87.) Witness 12 for the defence produced a title deed, notes page 90, in the name of the Kakopetria village commission. That exhibit is for a plot of land from which the spring issues described with the following boundaries: "Karkoti river; successors of Haralambos Kyriacou; Gavrielis Kyriakou; succession of Hji Savva Hji Michaeli; Road and Monopadi." The exhibit was produced to indicate the existence of a spring. Page 91. Exhibit 12 is dated 12th November, 1925. Notes page 100. The Village Authority issued a certificate to enable the registration to be effected. That exhibit is Exhibit 15. The written consent, Exhibit 16, was admitted against our objections. Notes page 100. Exhibit 14 is the search. Now, these documents put in by the Plaintiffs, Exhibits 15 and 16, were put in for the purpose of indicating that the river above Kakopetria, i.e., the Ayios Nicolaos river, is known by the name Karkotis. These exhibits are not evidence against the Defendants. They constitute hearsay evidence. But these documents do not assist us in any way in the solution of the problem as regards the name of the river. If the official survey calls the Ayios Nicolaos, Karkotis river, we would naturally expect that all certificates issued by the Village Authority from the Evaluation Books of Kakopetria would simply perpetuate the mistake, it is necessary because this is a description in the official evaluation books, all particulars in the evaluation books including boundaries are based on the survey particulars and survey description of the boundaries, and it would be absolutely impossible, in my humble submission, for the village authorities of Kakopetria to issue a certificate with different boundaries without creating confusion. Your Lordships will see that Exhibit 15 is an exhibit written in the English language, naturally by the clerk who went for the local enquiry, and the clerk would certainly put the boundaries which the official evaluation books would indicate. Exhibit 16 is the certificate of the Village Authority concerning the ownership of the properties sought to be registered.

I now propose, my Lords, to comment on the documentary evidence which was correctly put in evidence and to which there was no objection on our part. All the title deeds put in evidence, all the registration in

the official Registry books, Tapu books as we call them, indicate that in no case was any registration recorded on the faith of the field book, Exhibit 2, in no case was a registration recorded on the faith of Exhibit 2. Registration No. 2512 is dated 3rd January 1896, it is Exhibit 3 (A). It is for running water, 30 minutes of water, and the reason for the grant of the title is given as being inheritance No. 1/1893 in the name of Mehmet Naafi. The boundaries recorded are: Running through Karkotis river on every 22 days from the Mosque Division. Registration No. 2513 dated 9th February, 1894, Exhibit 3 (B) is dated 9th February, 1894, and is in respect of 30 minutes of water. The reason for the grant: a title deed exchange number 2 KL.

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Chief Justice: What is the particular point you are making about this?

Mr. Houry: The particular point is that in any case the registration places no reliance whatever on the field book.

Chief Justice: On any field book or this particular book?

Mr. Houry: I am only concerned, my Lord, respectfully, with the present field book. The contention that the field book was relied upon to effect registration, and it is mentioned by the Court in his judgment, is, in my humble submission, incorrect.

Chief Justice: That is the point of your present argument?

Mr. Houry: That is the point of my present argument. In this case the boundaries are the same as in Registration No. 2512, but in this case the words "Mosque Division" are crossed out in red ink and replaced by the words "Jami Nevbeti," being the Turkish equivalent. Registration 2514, Exhibit 3 (C) is dated 9th August, 1899, and is for 45 minutes of running water not for 22 days. And the reason for the grant of the title is Exchange No. 71, Nisan 1892 in his name. Nisan is April. The boundaries are the same as those of Registration 2512. All these registrations have corresponding entries in the field book and are described in these terms in the field book. Running water of 30 minutes on every 22 days from the Jami Nevbeti Division, running from Karkotis river to Troodos. This appears in the notes at page 44. Witness 9 could not explain why all original registrations in the Tapu register omitted the words "of Troodos" to qualify the river Karkotis and he was unable to point out any other original registration having that qualification. This appears in the notes at page 44. We are told that the omission was due to a mistake in copying from the field book, but it is a mistake which occurs time and again. And I may only refer your Lordships to registrations 2512, 2513, 2514, 2510, 2511, 7082, 7083, 8211, 2515. It rather looks as if it were a conscious omission, if it is an omission.

Then witness 9 could not explain why the words I quoted: "having its source from the spring on Troodos" were introduced in the subsequent registrations. (Notes page 45.) From these records, my Lords, to which I have just referred, the following conclusions emerge. The registered owners' rights are limited to the Mosque Division. (B) They are ones in every 22 days, and this implies that the owners of water of the Mosque Division irrigate at intervals of 22 days. This is against the story put forward by the Plaintiffs that Petra owns the water on Saturdays, Sundays,

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Tuesdays and Wednesdays. For, if a man be entitled to water on a Wednesday at noon his turn after 22 days would fall on a Thursday at noon, and this would be a day on which Petra people do not own any water. After 22 days the turn would fall on a Thursday, a day admittedly on which Petra people have no claim to the water. So we see that this is impossible. The rights recorded are for water running through Karkotis on every 22 days from Mosque Division.

Chief Justice : Where is the Mosque Division ?

Mr. Houry : There is nothing in the evidence. There is something in the report which is hardly intelligible. There is no point to indicate from what point Karkotis river starts. I only refer to the registration. 10

Now, the registrations as such do not throw any light as to the point from which Karkotis river starts. There is nothing to show that the water is to be got on Saturdays, Sundays, Tuesdays or Wednesdays since the registrations only speak of every 22 days. And finally there is nothing to show the time from which the Petra people are to start taking the water nor when it ends. And reading through the reports of Salim Effendi I have a faint recollection that the time was never constant, that the man would start at a particular time one year and his time would be rearranged the year following. 20

I shall now pass, with your Lordships' permission, to Exhibits 7 (A), 7 (B), 7 (C), 7 (D) and 7 (E). Exhibit 7 (A) is in respect of Registration No. 8436 dated 24th December, 1929. It is for running water, 30 minutes, in every 22 days. The boundaries again are : " Running through Karkotis river, having its source from the spring of Troodos." This registration is derived from registration 7760, and registration 7760 is derived from registration 7742, and registration 7742 is from registrations 2510 and 2511. The boundaries of these original registrations, 2510 and 2511, is the following : " running through Karkoti river on every 22 days from Mosque Division." This appears in the notes at page 45. So we see that the boundaries in the newest registrations contain a description not existing in the original registrations. The words " having its source from the spring of Troodos " are an innovation. I believe the registrations 2510 and 2511 must have been made in the year 1896, and I may respectfully refer your Lordships to Exhibit 3 (A) which is registration No. 2512 and which is dated 3rd January, 1896. So between 1896 and 1929 the boundary of the same property, of the same right, was changed. Could there be any reason for the boundary of the same 30 minutes of water to change by eliminating the words " Mosque Division " and substituting for the same " having its source from the spring of Troodos " ? I shall show later on that the Land Registry could not explain this change. Exhibit 7 (B) is in respect of registration No. 8071. It is for running water one hour on every 22 days. Here again the boundaries are stated as : " Running through the Karkotis river having its source from the spring of Troodos." Here again we notice that the registration is derived from the registration No. 7758 and registration 7758 from registration 7740, and registration 7740 from registration 7082 and 7083, and both 7082 and 7083 have the following boundaries : " Running through Karkotis river, called Ayis Yanni Nevbetti." This appears in the notes at page 46. The same innovation in the boundaries occurs in this case as in the case of Exhibit 7 (A). Exhibit 7 (A) is in respect of registration No. 8211 dated 50

[sic 7 (C)]

6th July, 1927. This registration though later in date to Exhibit 7 (B) maintains the old boundaries. Thus: "Running through Karli Dagh Karkoti river on every 22 days," no allegation is made whatsoever of the famous spring of Troodos. Exhibit 7 (D) is in respect of registration 7226 dated 30th November, 1917, and is for one hour in every 15 days on Tuesday night. A share of 76/256. Could it be possible here again to have Tuesday nights at intervals of 15 days? The boundaries are again thus: "Running from Karkotis river of Troodos." This registration is derived from registration No. 7054. To come to the last of these series, Exhibit 7 (E) is in respect of registration No. 8648 and is dated 28th November, 1931, it is for 30 minutes of running water in every 22 days. The boundaries again are: "Running through Karkotis river of Troodos."

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Griffith Williams J.: Is that right? Twenty-two days, that is exactly three weeks, isn't it, to get back to the same day you have to make it one more day over the 21 and the same with 15 days, from Tuesday to Tuesday or Wednesday to Wednesday.

Mr. Houry: If, my Lord, the right is on a Wednesday at that specific hour, if it is every 22 days it comes on a Thursday.

Griffith Williams J.: No.

20 *Mr. Houry*: Unless I am very much mistaken, you will begin counting from that hour on Thursday.

Griffith Williams J.: Tuesday would be the seventh day and Wednesday would be the eighth day, and the same if you are reckoning in two weeks or three weeks, Wednesday would come round again on the 15th and on the 22nd day, if you start counting from the Wednesday.

Mr. Houry: If the right is to take the water on a Wednesday at noon and it is after 21 days the first day ends on Thursday, that is, Thursday is one day, and . . .

30 *Mr. Clerides*: Thursday is the eighth, Wednesday to Wednesday 7th and Thursday 8th.

Mr. Houry: If the right to take the water starts on Wednesdays 15 days hence and 22 days would fall on a Thursday.

Griffith Williams, J.: It depends how you reckon it.

Mr. Houry: I was reading 7 (E). The boundaries are: "Running through Karkotis river of Troodos." The previous registration is 8641 and that is the new registration, my Lords. The old state of things does not help us in solving this.

40 The conclusion to be drawn from these Exhibits 7 (A) to 7 (E) is that there is no uniformity in the statement of the boundaries. The original registration of Exhibits 7 (A), 7 (B) make no mention of the spring of Troodos. That description does not exist in Exhibits 7 (C), (D) and (E). Exhibit 7 (E) is the most recent and describes the boundary as running through Karkoti river of Troodos, a description altogether different to that given in the original registration of Exhibits 7 (A) and 7 (B). While differences occur in the statement of boundaries we should not forget that these registrations refer to Petra water, claims in respect of the water of the Karkotis river. The subsequent exhibits throw light on how the words

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“ of Troodos ” came to be introduced in the statement of the boundaries. And I shall now pass on to Exhibit 13 (A). It is in respect of registration No. 2568, dated 19th June, 1894. This registration is derived from Exhibit 13 (A-1) registration No. 2515, dated 9th August, 1899. This date appears to be a mistake since Exhibit 2515 possesses an earlier serial number to Exhibit 13 (A) and therefore should be anterior in date. However this may be, registration 2568 is for two hours of water on every 22 days. It has no boundaries but the boundaries of registration 2515 as they originally stood were: “ Running through the Karkotis river on every 22 days from the Mulla Moustafa Division.” A note in red ink corrects 10 this description by scoring off the words “ on every 22 days ” and by the substitution of the words “ of Troodos ” for the first time. The reason for the grant of the title in the official registration is given as: “ Exchange No. 21/1886 in his name.” Let us compare this Exhibit 13 (A-1) with Exhibits 13 (B-1) and 13 (C-1). We notice in Exhibit 13 (B-1) that it is registration No. 2522, undated, and is for two hours and 30 minutes of water. To this is added a note in red ink as follows: “ On every 15 days Wednesday night.” The boundaries are given as: “ Running through the Karkoti river on every 15 days Wednesday night from the Mourkousman Salesi Division.” A note in red ink occurs in the register and strikes off 20 the words: “ On every 15 days Wednesday night ” and puts the words “ of Troodos.” In the register. Likewise Exhibit 13 (C-1) is for registration No. 2541, undated, it is for one hour water on every 22 days. The boundaries are: “ Running through Karkoti river from the Kanoura Division.” The boundary is corrected by the addition of the words “ of Troodos ” in red ink. The reason for the grant of title is given as “ Exchange No. 313SH 1883 in his name.” SH would probably stand for Shaban. We notice the identical correction made to registration 2522 which is Exhibits 13 (B-1) and (B-2) registration 2511 which is Exhibit 13 (C-1) has a correction made to registration 2515, Exhibit 13 (A-1). 30 In all these cases the words “ of Troodos ” is introduced for the first time to qualify the name of the river Karkotis. All these three registrations are derived from the very oldest registration we have in evidence, from the Registration 2515 which comes from the year 1886, that is, before the preparation of the field book and this appears clearly from the Petra Register itself in describing registration No. 2515 the registration states the reason for the grant of the title to be: “ Exchange No. 1/1886 in his name.” Registration No. 2522, undated, comes from the year 1883, and this is the very oldest, my Lords, 1883. Here again the Petra Register states the reason for the grant of the title to be “ Exchange No. 312/ 40 Shaban 83.” Shaban 83 means Shaban 1883.

Griffith Williams, J.: Shaban meaning the month ?

Mr. Houry: The month. Registration No. 2541, undated, comes from the year 1883. Here again the Petra Register states the reason for the grant of the title to be exchange No. 313 Shaban 1883.

Now, these records are, in our respectful submission, the most important records that would help us in this case to solve this mystery of how the words “ of Troodos ” were introduced. From these records it is clear beyond any shadow of doubt that the older registrations from which registrations 2515, 2522 and 2541 are derived made no mention of the 50 Karkotis river as being of Troodos. The first mention of the qualifying

words "of Troodos" make their appearance apparently in or after the year 1883, when a field book appears to have been made. Now, from the fact that the oldest registration or record did not mention the words "of Troodos" it appears that in the mind of the Land Registry Office of that period no words qualifying Karkotis river ever occurred to them. The L.R.O. clerk could not explain when this change took place or why it did take place. This appears, my Lords, from the notes at pages 97 and 98. Now, although the correction of the boundary was made by the addition to the river Karkotis of the qualifying words "of Troodos" in

10 Exhibit 13 (A-1), in Exhibit 13 (B-1) and in Exhibit 13 (C-1) registration 2515, 2522 and 2541 respectively, we notice that that correction was not taken to the subsequent registrations, and I am referring your Lordships to Exhibit 13 (A) which is registration 2568, and to Exhibit 13 (B) which is registration No. 2569, and Exhibit 13 (C) which is registration No. 2570, in all these registrations, two dated 19th June, 1894, no boundaries are stated. The fact that in subsequent registrations the words "of Troodos" were not carried is another instance of the uncertainty and of the unreliability of the addition of the words "of Troodos" to qualify the Karkotis river.

- 20 Now, my Lords, in reading through all registrations and title deeds that speak of the river Karkotis as being of Troodos issued subsequently to the year 1883, we have to bear in mind that the words "of Troodos" are an innovation that was introduced at a much later date, the exact date, as also the reason, being wholly unknown to the L.R.O. and completely unexplained by the evidence. My Lords, to make a proper and lawful addition to the river's name by adding an extended denotation the people affected by such change should, in justice be notified so that they may have an opportunity to make their objection, and if their objections are decided
- 30 people are precluded from questioning the propriety of the addition. There is nothing whatsoever in the evidence that shows that any of the Kakopetria people ever knew of the way these Petra cochans were written or corrected.

- The title deeds, however, appear to be based on a division of the water by the Petra people commencing from certain times. Exhibits 3 (A) and 3 (B) speak of the Mosque Division, so do registrations Nos. 2510 and 2511. Registrations No. 7082 and 7083 refer to Ay Yanni Nevbeti, another division. These appear in the notes at p. 46. Other registrations refer to so many hours in every 22 days. Exhibit 7 (D) refers to a division based on 15 days. These title deeds and many others that were produced
- 40 to the Court show that the direction of the L.R.O. in registering these water claims referred to in the title deeds such as Mosque Division and Ay Yanni Nevbeti and the like, these divisions have not been connected in any way by the evidence with Kakopetria. In our respectful submission the title deeds are valueless to decide upon the rights of Kakopetria.

- Now, in view of what has been said already, let us consider for a minute the contradictions, the extensions and contradictions which the other title deeds upon which I have not yet commented, are full. There is a bunch of title deeds put in as Exhibit 8, there are 14 deeds in all. I will only read briefly the statement of the boundaries in each of these
- 50 title deeds and I shall show how uniformity is completely absent. Title deed 9524 which is Exhibit 8 (1) gives this description: "Running through

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the Karkotis river from Troodos." Title deed No. 8071 gives the description thus: "Running through Karkot river having its source from the spring of Troodos." This is dated May, 1926. Title deed 8211 is dated 6th July, 1927, and gives the following boundaries: "Running through Karli Dagh Karkot river on every 22 days." No mention is made at all of the words "of Troodos."

Mr. Clerides: Karli Dagh means Troodos, it is the Turkish for Troodos.

Mr. Houry: Title deed No. 7226 which is dated 1917 gives this description: "Running from Karkotis river of Troodos." Title deed 10 8648 dated 1931 gives this description: "Running through Karkoti river of Troodos." Title deed 9160 is dated 1937. I think that is the newest registration, my Lords. This is the boundary: "Running through Karkoti river and called 'Louka Nebeti.'" Now, this is a registration in 1937, and it makes no mention of the words "of Troodos." Title deed No. 8019, 1925, gives this description of the boundaries: "Running through Kasba river of Troodos from the Mouslouman Selesi Division." Nothing about Troodos. Registration No. 8932 is dated 1935 and gives the following description: "Running through Karkoti river." Nothing at all about Troodos. Registration No. 9159 is dated 1937. This is another 20 of the last, recent registrations and it gives this boundary as "Running through Karkotis river." No mention at all of Troodos.

Chief Justice: What are the limits of Troodos, does anybody know?

Mr. Clerides: Well, up to Hionistra, Troodos extends to the other side, but of course when it says "from Troodos" it means from this side, the Kakopetria side of Troodos.

Chief Justice: Quite. But how low down does Troodos go, where does it stop?

Mr. Clerides: It practically stops outside Kakopetria, I mean not the private lands, but Kakopetria the area, the boundary of Kakopetria 30 is the forest of Troodos.

Griffith Williams J.: Troodos is the name of a forest or the name of a mountain?

Chief Justice: Troodos is a mountain?

Mr. Clerides: Yes, it is a mountain, but it is called Troodos right up to the boundary line of Kakopetria.

Chief Justice: Who says that it stops there? But it may be Troodos so far as saying that a spring comes from it or a river comes from it, could you say that the river that began below Kakopetria still came from Troodos? 40

Mr. Clerides: No, that goes too far.

Chief Justice: Why not?

Mr. Clerides: If we come to below Kakopetria then we have the hills, the hills below Troodos.

Griffith Williams J.: It is not foothills at Kakopetria, you are beyond the foothills, you are on the Troodos massif.

Mr. Clerides : Yes, but below Kakopetria . . .

Chief Justice : How high up would a stream have to start before you could say it was from Troodos ?

Mr. Clerides : Well, if the stream comes from the bulk of the mountain of Troodos then it must be, the river will be coming from Troodos, but if it starts below, I mean if there is a rivulet starting from Kakopetria downwards you won't say that it starts from Troodos.

Chief Justice : But if it starts a quarter of a mile above Kakopetria ?

10 *Mr. Clerides* : Well, above Kakopetria one may say that it is again Troodos.

Chief Justice : Pretty fine line ?

Mr. Clerides : Well, it cannot be defined.

Chief Justice : We know so little about this river, don't we, above Kakopetria. Some of these descriptions which have been read out to us by Mr. Houry speak of the spring on Troodos.

Mr. Clerides : Yes.

Chief Justice : Who can say what that was ? There must be hundreds of springs on Troodos.

Mr. Clerides : It may be not spring, but springs, source on Troodos.

20 *Chief Justice* : But some of those descriptions say : the spring, one single one.

Mr. Clerides : It may be it is a clerical mistake of the clerk who copied it.

Chief Justice : But what does it mean, that is what I want at some time to know, when you say a spring is from Troodos, of Troodos, what does it mean ? I do not want you to answer it now, because it is not a very easy thing to answer, but the description, that description is used with the intention of showing that it must include something higher up the hill than a river which begins below Kakopetria, doesn't it ?

30 *Mr. Clerides* : I think that may be.

Chief Justice : Yes. That is the suggestion. Well, is it possible to get any sort of idea of what anybody would understand, what people in general would understand by referring to a spring—I am not putting anything to you to answer, but putting something passing through my mind—is it possible to say ?

Mr. Clerides : Well, I will consider it, I see the point, my Lord.

Chief Justice : You do see it ?

Mr. Clerides : Yes.

40 *Chief Justice* : Because the argument is that if you use that description for a river it must mean that it goes higher up than Kakopetria, anyway ?

Mr. Clerides : Yes.

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Chief Justice : And that is to say that if your rights are rights to take water from the Karkotis river of Troodos it must follow that you have rights to take water above Kakopetria ?

Mr. Clerides : Certainly.

Chief Justice : Well, that needs to be made a little bit clearer, I think.

Mr. Clerides : Yes, very well, my Lord, I see the point.

Chief Justice (to *Mr. Houry*) : Now, we are near the end and you said yesterday that you would take three hours ; you have taken very much more. We have been very careful not to interrupt you lest we . . .

Mr. Houry : Thank you. What is left is a few words. 10

Chief Justice : A few general sentences will give us this point you have been making really quite clearly.

Mr. Houry : Thank you. I need not then refer to title deeds 8436, 8566 and 8545.

Chief Justice : Except as example of the description which changed approximately after a certain date. But can you give us any reason for the change ?

Mr. Houry : My Lords. I cross-examined with some patience the L.R.O. and they could not state when the change occurred nor why it was done. They could give no explanation of any sort, no papers, no local enquiry, nothing. 20

Chief Justice : Let me make the point—I want to put to you a point which I think you make, so that you can see whether I put it right so that you understand it in connection with what you have just been saying—you make the point that, if according to the former description of the Karkotis river people had rights to take water below the junction of the Karvounas and the Ayios Nicolaos rivers, a mere changing of the name of the Karkotis river by saying it is of Troodos cannot give them rights which they had not before ?

Mr. Houry : This is undoubtedly one of our contentions, and the 30 second contention that would follow from this, is that the change . . .

Chief Justice : That, I take it, would be quite an important point in your argument ?

Mr. Houry : If the change cannot be explained by the Land Registry Office then, in my respectful submission, no court of justice can explain the change, and as long as the original registration did not contain this qualification, it would be a thousand times safer to rely on the older registration as giving the correct statement of the boundaries.

Chief Justice : Yes, but the older registration, as you have been telling us is that people have the right to take water running in the Karkotis 40 river from a certain division. The description is by division. Do we know where these divisions are ?

Mr. Houry : Wherever they are, my Lords, one thing is certain, that they are far below Kakopetria.

Chief Justice : Is it so ?

Mr. Clerides : Divisions, my Lords, are the divisions of the water among Petra people. They are fully explained, all the divisions, in Exhibit 5, there were seven or eight divisions which are specifically mentioned in Exhibit 5, and they refer to the water which the Petra people are entitled to among themselves.

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Griffith Williams J. : Nothing to do with the Karkotis river ?

Mr. Clerides : No, the division is an internal affair of the Petra people.

Chief Justice : And is it a locality ?

Mr. Clerides : No, they say, for instance, Division of the Mosque, that is, the share which the Mosque will take, there is a Greek division, that is the division of the water the Greeks will take, a Moslem division, the water the Moslems will take on such and such days and hours.

Chief Justice : And it does not go to locality ?

Mr. Clerides : No, nothing at all to do with it.

Chief Justice (to Mr. Houry) : Is that the construction you put on it ?

Mr. Houry : If we look at Exhibit 5 read in conjunction with Exhibit 6, we notice that Salim Effendi puts the locality and he specifies certain dams and it is from these dams downwards that the divisions start. The point of commencement is from the dams which, according to Salim Effendi are indicated on the plan Exhibit 6.

Mr. Clerides : That is the "taxim" of the water of the various villages. What is stated in the title deeds is the division of the water between Petra people.

Mr. Houry : Taken from certain dams.

Mr. Clerides : No, it is not taken from the dams, it is "turns."

Chief Justice : A turn is not a locality.

Mr. Houry : The sketch read in conjunction with Exhibit 5 puts a locality to these divisions.

The Court rose at 7.35 p.m. and adjourned to 9.15 on the following morning.

30 10th March, 1950. 9.20 a.m.

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Court resumes hearing.

Appearances as before.

Chief Justice : Have you got a nice map there ?

Mr. Tavernaris : It is a map of the whole area which shows the position of the six dams in and around Kakopetria, which they prepared yesterday afternoon. If my learned friends want to look at it, it shows everything really. About the springs they do not say anything.

Mr. Clerides : We do not know anything about the springs. With regard to the dams, they are already in the plan, Exhibit 6, but it won't help much.

Chief Justice : They are very lightly marked. We have consulted about this, and it seems to us that it may be necessary that we should

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have further evidence about the actual physical condition above the junction of these two arms and deliberately they don't give them names. There are junctions between Kakopetria, we want to know what the actual physical condition is above that, and it may be necessary that we should get somebody who can tell us, with a map, exactly what the physical position is.

Mr. Clerides : It is much better for us to have an L.R.O. clerk. I mean the L.R.O. Surveyor.

Chief Justice : Who knows that particular area.

Mr. Clerides : Yes.

10

Chief Justice : And knows it well enough to take a map and explain to us exactly where the position of these dams in dispute is, what constitutes the Karkotis river. Nothing about custom or what people do, what they have done, or what right they have to do, nothing about that. Simply the physical condition on the ground. We must know what we are dealing with.

Mr. Clerides : Yes, my Lords, in that case this rough sketch cannot give any idea, and it is much better to have the survey plan of the whole place, and have it explained by a witness.

Chief Justice : If the survey plan is on a big enough scale.

20

Mr. Clerides : They are bigger plans. In the big survey plan all the dams and the channels, of course, will be shown above Kakopetria.

Chief Justice : A good deal of Mr. Houry's argument, and he is perfectly entitled, of course, to argue in that way, is that we must not look at any map at all which is being put before us, and that, of course, he is perfectly entitled to say; his objection no doubt being to show that whatever rights you have, you have not proved the particular rights which you claim. And that makes it very difficult, of course, for a Court to act, and we do not want, if we can avoid it, to act in such a way as to settle nothing at all, and merely to leave more disputes to arise in the future. So that if we properly can, in this case, come to a conclusion which will settle something we should do so, and it seems to us that it will be very difficult for us to do that, unless we know the actual physical condition. Of course, the best thing is that we should all go up there. It is not the function of a Court of Appeal, but that really is almost the only way in which to come to a satisfactory conclusion on matters of this kind. Isn't it? You then know what you are talking about.

30

Mr. Clerides : My Lords, of course, the survey maps are drawn to scale, and there must be in the L.R.O. a bigger plan for the area of Kakopetria in which the rivers, the subject-matter of this action, are to be drawn to scale, and it may be, or rather, it should be, that all dams are shown by name, and the channels leading from the dams to the properties.

40

Chief Justice : Very well. If someone can produce a map of that kind, he can then come and say: I know this particular area, I have been there, and this is an accurate map of it; then it does not rest upon the fact that this is a Government map. This does not rest on that, you

have the actual evidence of a man who knows the spot and says this is a proper map of it, and such and such a dam is here, and such and such a dam is there, and so forth. There is no question of admissibility of evidence, there and then we can have the physical situation, which is all one is talking about, properly in front of us. If, by the way, these dams are not marked on any survey map, whoever it is who comes here as a witness can mark them and go up there and see where they are.

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10 *Mr. Clerides* : I do not know whether we can find the man who prepared those plans to come and say the plans are accurate. Even if we do not manage to obtain this plan, then we might have a local enquiry and a witness who will go to the spot and mark on the map the channels and the dams, then we will have what your Lordships require.

Chief Justice : We do not want a long delay. We shall have to finish the case and the judgment by the middle of April.

Mr. Clerides : In that case, if that will be necessary, we may apply to the Survey Department to send a man up there with the maps and prepare a complete map of the whole thing on the survey map, and mark everything, and come as a witness.

20 *Mr. Tavernaris* : Including the springs, my Lords. All the springs where the water is thrown into the river.

Mr. Clerides : Maybe in the map the springs will be shown. All springs are shown in the map, and sluices and everything.

Chief Justice : We ought to have those. There ought to be something which is a part of the record in this case, and the admissibility of which is beyond dispute to show us what we are dealing with.

Mr. Clerides : We will see how the case goes on, and we may apply to and ask the Survey Department to send a surveyor with the maps up there.

30 *Chief Justice* : If you could do this in agreement with Mr. Houry so that we shall have no argument afterwards whether it is admissible or not, or accurate or not, it would save us a great deal of time.

Mr. Houry : My only objection to the plan already put in has no other reason than this. That it eliminates the name of the river Ayios Nicolaos and puts another name. I have no objection to any plan being prepared and another name being put. According to the Plaintiffs this part is called Karkotis, according to the Defendants it is called . . .

Chief Justice : Both arms are called Karkotis later on.

Mr. Houry : There are difficulties . . .

40 *Chief Justice* : We shall then know what constitutes this river. Well, now, we shall no doubt have to sit this afternoon, so perhaps in the meantime you will make some enquiry to know what prospect there is of getting such a map, and evidence of the kind we want, purely as to the physical condition, within a particular time. Because, as I say, we must finish this case completely by the middle of April.

Mr. Clerides : I understand that the limit of the enquiry by the Surveyor will be from the junction upwards.

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Chief Justice : That is all ?

Mr. Clerides : Yes.

Chief Justice : I do not know if that covers a very large physical area or not.

Mr. Clerides : It does, but I do not think there will be difficulty because the plan will be ready, the plan is ready, and if the man goes with the plan up there, he will see himself where the dams are, and then will mark them in the plan and verify them.

Chief Justice : And if he can put in the springs, if they are not already there, which are being mentioned in dispute, there will very likely be a 10 great deal more we do not know about the water.

Mr. Clerides : All springs must be shown on the survey map. My experience is . . .

Mr. Tavernaris : Some titles are issued, but most of them are new springs since 1900.

Mr. Clerides : This plan was made in 1925. Anything after 1925 may not be marked.

Chief Justice : Then he can mark it. I hope you agree on both sides that we shall know much better where we are, when we get something of that sort before us.

20

Mr. Clerides : Yes, my Lords.

Chief Justice : You were about to deal with the judgment.

Mr. Houry : As we are on this subject, would it be also helpful if the Surveyor could measure the volume of the spring water ?

Chief Justice : That will take a tremendous amount of time.

Mr. Clerides : A surveyor cannot do it, it must be . . .

Mr. Houry : It is a very easy process. To measure the spring water at a particular point before the water reaches, and then another point where the spring water reaches the conduit, another measurement.

Mr. Clerides : If he measures the springs now, he will find them five 30 times more than they will be in June or April.

Griffith Williams J. : This isn't the time of the year for irrigation. The time for irrigation is the beginning of March.

Mr. Houry : Actually, the volume is reduced considerably between August and September which are the worst months. There is now so much water nobody worries.

Mr. Clerides : Up to May, nobody worries.

Chief Justice : So, I do not think that we need ask for evidence beyond the actual physical condition of things. You were going to deal with the judgment, I think, Mr. Houry.

40

Mr. Houry : Yes, my Lords. The trial Court opens its judgment by saying that the witnesses on both sides are biased. This appears in the

notes, page 120, but for the documentary evidence the Court itself had no difficulty to arrive at any decision. This appears at page 120. The trial Court goes on to say that the evidence for the Defendants is negative; in our submission this finding is not justified, that the evidence for the Defendants is negative. It is positive all along and it appears, the evidence submitted for the Defendants, appears from page 57 of the notes up to page 101. All witnesses for the defence swore that there was no restriction in the water that was taken by Kakopetria from the four dams which we had mentioned, they were free to take water in all days of every week and in every week in the year.

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Then the trial Court goes on to comment on the survey maps Exhibits 1 (A), (B) and (C) as being corroborative of the story of the witnesses for the Plaintiffs, to the effect that Karkotis river extends right up to the summit of Troodos. This appears in page 121.

Chief Justice : It is a little more than they actually say, isn't it? Do they say it goes up to the summit of Troodos?

Mr. Houry : It says from Troodos to Kakopetria by the bridges, and from the bridges downwards. It is the language which the Court uses. I am reading from the last paragraph, page 121 :

20 "The three survey maps marked Exhibit 1 (A), (B) and (C) in this case corroborate the evidence of the Plaintiffs' witnesses that the river Karkotis or Kariotis extends above the two bridges in Kakopetria towards Troodos. The area from Kakopetria up to Troodos is covered by these three plans. These are official copies of plans taken from survey department originals of which were prepared when the general survey was carried out in Kakopetria. It is evident from these plans that the river beyond the two bridges Kakopetria towards Troodos passing by Ayios Nicolaos Monastery is described as Kariotis river."

30 *Chief Justice* : Just wait a minute. I would like to get that particular passage. Does that refer to one arm of the river above the junction, or to both?

Mr. Houry : I do not think the trial Court treats it as two.

Griffith Williams J. : Page 121. The name Kariotis is given to the river there; isn't it a much bigger stream than the other one?

Mr. Clerides : There is evidence as to that.

Mr. Houry : I do not think the evidence—in any case, if it is bigger, it could not be very much bigger, I mean, the volume of water conveyed, the fact remains that both arms contain water all through the year.

40 *Chief Justice* : Yes, but returning to the judgment of the Court, and how it should be interpreted. Should we take it as referring only to what is called the Ayios Nicolaos arm or also to the Karvounas arm?

Mr. Houry : There is, my Lords, a fault in the judgment; the Court does not make its meaning clear, but they do treat the Karvounas river as being part of Kariotis.

Chief Justice : A tributary to Kariotis.

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Mr. Houry : Although every time that the name has been called Karvounas there is something about it. Here we are. Page 109, it is about 20 lines from the bottom of the page (p. 122) :

“ When we read the title deeds in the name of the Plaintiffs and some of which in a bundle as Exhibit No. 8 are before us it leaves no doubt that the right of water or that the water to which Petra people are entitled is the one flowing in the Karkotis river which includes portion of the river called Ayios Nicolaos and also includes the water running in the river Karvounas as being a tributary to Karkotis river.”

10

Chief Justice : They refer on the same page to the Ayios Nicolaos river, or what is described as that, and even its continuation to Troodos.

Mr. Houry : Where is that, my Lords ?

Chief Justice : Page 122.

Mr. Houry : “ Extends beyond Kakopetria towards Troodos again.” The same words are employed. Towards Troodos.

Chief Justice : There is an even stronger passage. The one I read.

Mr. Houry : My Lords, here, as I have respectfully shown yesterday, the claim of the Plaintiffs as it is framed in the pleadings, does not claim the waters of Ayios Nicolaos or Karvounas because they are part of Karkotis. They claim the waters of Ayios Nicolaos and Karvounas because they say that they had *ab antiquo* rights to the waters of these two rivers or otherwise because they had title deeds which is the basis of their claim, and in this respect the trial Court went far beyond the Statement of Claim and made a finding which was outside its terms of reference, outside the terms of reference as limited by the pleadings. If it were necessary for the Plaintiffs to substantiate their claims to the two rivers, particularly showing that they are a part of Kariotis, it was open to them to claim an amendment of their pleadings, and if the Court would grant it, but no amendment was claimed right up to the end. Then the trial Court, my Lords, treats Exhibit 6, Salim Effendi's sketch, as another bit of corroboration of the Plaintiffs' witnesses.

20

30

Chief Justice : Page ?

Mr. Houry : Exhibit 6, at the bottom of page 121. “ The fact that the river above Kakopetria was called Kariotis is supported also by the Exhibit No. 6 which was prepared by surveyor M. Salim in August, 1901. This is a sketch,” the trial Court goes on to say, “ but it has been so well prepared that it sheds light to many points arising in this case.”

Now, this comment, my Lords, that it has been so well prepared, is, in our submission, without any justification. How does the Court know that it has been so well prepared ? It is only the evidence that could enlighten the Court on a matter like this. Then again, if I may have Exhibit 6, my Lords (*handed Exhibit 6*), Exhibit 6 does not give any name to the river Karvounas, it does not give any name to Ayios Nicolaos river, and it gives the name Kariotis river to indicate the name below the junction of the two tributaries, and yet the Court treats this plan as showing the extent of the river Kariotis.

40

Chief Justice : It says, at the bottom of the page 121 : " The name Kariotis is given to the main river throughout, and this river under the same name evidently extends to the portion above Kakopetria as there appears no other name for that part of the river in the sketch."

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10 *Mr. Houry* : Is it legitimate inference ? Is it legitimate and is it conceivable that a sketch made on a large scale when a multitude of local names from the very circumstance happen to be omitted, that the Court should draw the inference that those local names do not exist ? Then, my Lords, the sketch which we consider is a sketch which was prepared at Petra, according to the statement of Salim Effendi who prepared the sketch, it appears in Exhibit 5. Exhibit 5, at page 1 of the exhibit (p. 262). " When I was at Petra village I have first drew up a sketch." Those were his words, and from this statement, my Lords, we must infer that all the information which Salim Effendi obtained for the preparation of that sketch was information obtained from Petra and not from any other source.

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20 *Chief Justice* : Is that possible ? Is it a necessary inference to draw from that statement ? He talks about all the villages from Kakopetria down. It would have been of very little use to them who sent him there to report about what happened at Kakopetria and lower down from there. Why are we not to suppose that it was not down a stretch of this river ?

Mr. Houry : He says " when I was at Petra village I have first drew up a sketch."

Chief Justice : He may have actually drawn the thing at Petra. You have to draw the sketch somewhere.

Griffith Williams J. : This is the sketch, isn't it, that he drew at Petra ?

Mr. Houry : It is supposed to be, according to the version of the Defendants.

30 *Griffith Williams J.* : He probably drew a rough sketch first of all, and worked on that until he got something to set out more clearly.

Chief Justice : Do you ask us to conclude from what you have read that the whole of that report was written without ever leaving Petra ?

40 *Mr. Houry* : His mission, my Lords, if he had any mission at all, Salim Effendi explains it in his own letter. In compliance with his instructions respecting the enquiries to be made as to the " taxims," etc., of the running water of Petra, described in Petra's local enquiry 164/900. Those local enquiry papers were never produced, but it seems from the language employed that his mission was to enquire into the divisions of water of Petra.

Griffith Williams J. : The sketch is only of Petra, that is all he is talking about in Exhibit 1. It could not be this particular sketch.

Mr. Houry : He might have drawn up a rough sketch in pencil possibly, and when he came to the office here, he employed better paper and ink to prepare it.

Griffith Williams J. : This was showing the river of Atsas, " and all the lands irrigated by the running water of Petra which runs through the Kariotis river," but it comes from the Kariotis river to the Atsas.

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Mr. Clerides : It is another river, my Lords.

Griffith Williams J. : The water comes from the Kariotis to the Atsas.

Mr. Clerides : Kariotis is another river, and the Atsas is another river.

Mr. Houry : In any case, my Lords, it is clear from certain passages of the evidence—I will find it if it is necessary—that Salim Effendi never did go to Kakopetria in his efforts to find out the divisions of the Petra water at all. In Kakopetria people were never consulted, according to our evidence and according to his own statement, there is nothing to say that, in Kakopetria, people ever knew of his mission. Now, in view of the overwhelming evidence, my Lords, which was submitted on both sides, Plaintiffs and Defendants, to the effect that Kariotis river starts from the junction of the two tributaries downwards, the trial Court finds it is forced to use this language. “It is possible that locally and in recent years this name was used only for portion of the river below the two bridges in Kakopetria.” 10

Chief Justice : Where are you reading from ?

Mr. Houry : From the judgment, my Lords.

Chief Justice : Yes, but will you refer us to the page.

Mr. Clerides : Page 122.

Mr. Houry : Thank you. Yes, it is just after the middle of the page. 20
“It is possible that locally and in recent years this name was used only for portion of the river below the two bridges in Kakopetria.” This statement, in my submission, is untenable, if it is a question of possibility at all, it is a question to which practically nine-tenths of the witnesses for the defence, and most of the witnesses for the Plaintiffs deposed, and it was not, in our respectful submission, correct for the trial Court to make that observation. Now, my Lords, I have addressed you yesterday at some length and . . .

Chief Justice : Just before you go on to that, there is a passage immediately below the one that you have read in the judgment about which I want to ask you a question. You referred us to it already, it reads like this : “When we read the title deeds in the name of the Plaintiffs and some of which in a bundle as Exhibit 8 are before us, it leaves no doubt that the right of water or that the water to which Petra people are entitled is the one flowing in the Karkotis river which includes portion of the river called Ayios Nicolaos.” Does that mean a portion of the river called Ayios Nicolaos, or all that portion of the river Karkotis which is called Ayios Nicolaos ? It is ambiguous. 30

Mr. Houry : It is ambiguous. Possibly your Lordship’s last remark might be the thing that the trial Court had in mind. I do not know, it is impossible to say. 40

Chief Justice : “And also includes the water running in the river Karvounas as being a tributary to Karkotis river.” It does not appear that the Court thought that tributary was called Karkotis. You will, no doubt, say something about that, Mr. Clerides, because, supposing that the right claimed is a right to water running in a certain river, it is possible that that right might include the right to prevent other people from

stopping water which would ordinarily reach that river from reaching it. Though their right to stop the water, or the right to prevent other people from stopping water which would otherwise reach the river, might arise before the water had reached the river.

Mr. Houry : Yes, it is not a possibility, my Lords. The water must be reduced to possession.

Chief Justice : What I put a moment ago may have been a little bit obscure. It will be clear if we take it like this. The water goes down these two arms, and immediately gets into what is undoubtedly the Karkotis river below Kakopetria. Someone may have a right to the water running in Karkotis river. It is possible that this right may include the right to stop other people from holding up the water in these two arms from reaching Karkotis, whether, in fact, those two arms are called Karkotis or not.

Mr. Houry : That is a possibility, it depends on the kind of right which the Plaintiffs can establish, but if only their claim is to the one . . .

Chief Justice : At any rate, it depends on the question of whether it is absolutely essential to argue that that arm is called Karkotis, and whether it goes to Troodos or not. We don't know where it goes from this map, it doesn't say.

Mr. Houry : Normally, my Lords, water, running water, normally as a general rule, if I am not mistaken, should be reduced to possession before one can say that it is mine. Until it reaches that bit, it is undoubtedly owned by the particular claimant, and if he claims to be the owner of water running in the Karkotis river beyond that, it must be understood that he is claiming a right to the running water the moment it reaches Karkotis, no matter from what source. But he could not be claiming the water running in Karkotis, have any claim to the other two tributaries, unless he be able to establish his rights to the other two rivers. It is a question of proof. He could not by magic say "that is mine." There must be proof of his claiming as well as from the river Karkotis, water running in from, or through the river Kariotis from other tributaries, and I am going to prevent other fellows disturbing the water from the other tributaries.

Chief Justice : Even though, we will say, the owners of water in those two arms so used it as to prevent any from coming down ?

Mr. Houry : If his claim is limited to the water running in or through the Karkotis, and it is proved that the Karkotis starts from the junction downwards, the water in the other arms has not been reduced to his possession.

Chief Justice : So other people can do what they like with that water, and it may cause the Karkotis to dry up completely ?

Mr. Houry : If his claim is that the water runs in or through the river Karkotis, this is my submission, it is on them to establish their right and the measure of that right, it is not for us, my Lords, at all. They have to establish that they were the owners of the water running in the two arms on all points in order that they should be able to prevent the people from

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interfering at the points from which they claim. Now, my Lords, from the passage which your Lordship has been generous enough to read, this is the language of the Court: "It leaves no doubt that the right of water or that the water to which Petra people are entitled is the one flowing in the Karkotis river which includes portion of the river called Ayios Nicolaos, and also includes the water running in the river Karvounas as being a tributary to Karkotis river." I have addressed yesterday at considerable length on the title deeds, and I tried to show how the words "and of Troodos" are an innovation annexed to the Karkotis river, and I also tried to show how the L.R.O. were unable to explain why these words 10 were inserted, and here we see the inability of the L.R.O. to explain the reason. We notice the Court drawing a legitimate inference from this circumstance, from the employment of the words "and of Troodos." It leaves no doubt, in my submission, the title deeds instead of corroborating the story of the Plaintiffs, in the circumstances I would say add more confusion to it—much more confusion indeed. Because, if the L.R.O. the authors of this innovation are unable to explain it, one would hardly expect the bench to be able to explain it.

Then, my Lords, we pass on to the Field Book; there we find the trial Court speaking of the Field Book, on page 123. The Court admits the 20 mistake in the Field Book on page 123. It says, practically from the twentieth line from the bottom of the page:

"The field book being kept in Turkish the translator in rendering the English version of the entries apparently committed some mistakes and in some instances entries were not recorded in appropriate columns. These were later corrected in red ink."

Chief Justice: You are reading from page 123?

Mr. Houry: Yes, my Lord; 20 lines from the bottom of the page. Now, my Lords, the field book is an exhibit before your Lordships and I have shown . . . 30

Chief Justice: Is that another one you say we mustn't look at?

Mr. Houry: Yes, my Lord.

Chief Justice: We will soon have nothing left.

Mr. Houry: Subject to it, of course, being admitted.

Griffith Williams J.: The mistakes are not in the field book, they are mistakes from the translation of the field book. They do not appear in the field book, only in the English translation.

Mr. Houry: I will come to that. Now, my Lords, the field book is before your Lordships, and out of the 140 pages which were written, we notice that as many as 92 pages are cancelled as being incorrect. No 40 registers were issued in consequence of those entries, and the Court limits the mistakes to the "Tapu" to the register of title deeds and, therefore, when mistakes were done in the translation, it doesn't show the big blunders, the tremendous blunders which exist in the field book itself.

Chief Justice: Are there?

Mr. Houry: The 92 cancelled pages.

Chief Justice: Why?

Mr. Houry : Because they were incorrect. No registers were issued in consequence of those, which shows that they were unreliable and nothing left of them.

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Chief Justice : Is there evidence that they were mistaken ?

Mr. Houry : There is evidence that no title deeds were issued in consequence of those wrong entries, and you will see that all these are cancelled.

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Griffith Williams J. : The same title deeds, do they all refer to the same number ?

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10 *Mr. Houry* : The reason why they were cancelled I do not know, it is not in evidence. The cancellation relates to page No. 636/93. This specific file was never produced, and possibly that file might refer to this. Another enquiry was conducted some time later. On the day of the affair this book was reliable, and it is all the same number referred to in every case. That local enquiry might have brought to light that all these cancelled pages were unreliable and cancelled them.

Chief Justice : We do not know.

20 *Mr. Houry* : The very same number is quoted on the same page No. 636/93. They do not refer to a register, my Lords, at all, it seems that all these records here, upon which the L.R.O. are supposed to issue title deeds, were found to be incorrect, and they were cancelled, and it is in evidence positively stated that no title deeds for these cancelled entries were issued. This shows the very big mistakes that were made in compiling this book, and yet the Court . . .

Griffith Williams J. : There is nothing in that book which specifically states that such and such an entry is a mistake. It doesn't say they were cancelled on account of a particular mistake, does it ?

30 *Mr. Houry* : The purpose of the field book, according to the evidence of the L.R.O. clerk, is that it was a record made on the files of the water rights of Petra people, and upon the face of it, title deeds were issued. This is what in one passage the L.R.O. deposed. Now, if that really is the purpose of this field book, and we notice later on that this same clerk told us that many of these entries were cancelled, and the inference is that they were cancelled and no title deeds issued. The inference must certainly be that these cancelled records were found unreliable and that they were not acted upon. There can be no other explanation to the cancellation. They do not say, if they had carried the entry to another record, that: we have transferred to, or carried it to another record, which means that every specific entry has been cancelled and not to be
40 acted upon, and not to be relied upon. There can be no other explanation, in my submission.

Griffith Williams J. : We do not know what these entries were, that were cancelled. We shall have to go through every entry to find what it was about.

Mr. Houry : The mistakes, in any case, my Lords, in the field book are very many.

Chief Justice : What conclusion did the Court draw from the field book ?

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Mr. Houry : " The field book being kept in Turkish the translator in rendering the English version of the entries apparently committed some mistakes and in some instances entries were not recorded in appropriate columns. These were later corrected in red ink. The field book Exhibit No. 1 was the book prepared on the spot by the officer of the Land Registry detailed to do the work, and they were made after local enquiries. For some years the field book was acted upon without any further formalities." This is another statement.

Chief Justice : True, but what was the importance of it in the view of the Court? One thing which I have been reading in the Court's view 10 is that the Karkotis river came from Troodos.

Mr. Houry : The description of the river in the field book is Karkotis river and of Troodos. Of Troodos.

Chief Justice : Another is the Karkotis river having its source from these springs.

Mr. Houry : I do not think this statement occurs in the field book.

Mr. Clerides : It doesn't occur in the field book.

Mr. Houry : This statement which your Lordship has just mentioned does not appear in the field book.

Chief Justice : That is a different exhibit, it is Exhibit 8 that that 20 occurs in.

Mr. Clerides : Only in one title deed is that word mentioned.

Mr. Houry : There is more than one.

Chief Justice : What I want to get is, what importance do you say the Court attached to the field book that it should not have attached. Is one inference which they drew from the field book, that the Karkotis river in fact extended above the junction?

Mr. Houry : My Lords, our submission is this, that the Court treats this as one of the species of the documentary evidence that supports the version of the Plaintiffs' witnesses and it certainly, although it might not 30 have said so in so many words, it is quoted here, the field book is referred to in the judgment in order to lend support to the finding which the Court makes on page 122. " It leaves no doubt that the right of water or that the water to which Petra people are entitled is the one flowing in the Karkotis river which includes portion of the river called Ayios Nicolaos, and also includes the water running in the river Karvounas as being a tributary to Karkotis river." Which is generally to support the view of the Court that the Karkotis is of Troodos.

Chief Justice : But that statement which you just read leaving no doubt only certain rights to the Plaintiffs, they make after referring to the title deeds. What I want to get is, what conclusion they draw from the field book that they should not have drawn, in your view? 40

Mr. Houry : The statement begins from here, my Lords, page 123 : " The able counsel for the defence drew our attention to the incompleteness of the description of the water in the register books and to some corrections made in red ink. The entries pointed out to us, Exhibit 13 (A), (B) and (C),

were apparently copied from the field book Exhibit No. 2 in which the corresponding entries are marked Exhibit 13 (A-2), Exhibit 13 (B-2), and Exhibit 13 (C-2). The field book being kept in Turkish . . ." My Lords, here, I think, what was at the back of the minds of their Honours, was this. I submitted that the register books were tampered with. Words were inserted without any proper justification. Then the Court mentions the field book to show that at least there was some sort of justification for correcting the registers. This, I think, must be the reason why the Court makes no reference to the field book, because in the field book no reference is made as to the river Karkotis. The qualification is always there, "of Troodos," and therefore there where the "Tapu" registers did not indicate that it was "of Troodos" the omission was well founded absolutely, that must be the reason why the Court mentioned the field book at all. There was no other . . .

Chief Justice : Is that the only importance which they attached to it ?

Mr. Houry : I think so, I cannot conceive of anything else.

Chief Justice : It is apparent that they attached that importance to it.

Mr. Houry : It is apparent, my Lords, that they did, yes. In order to give justification to the finding of the Court, it goes on to comment on the field book. The trial Court goes on to pass certain comments in connection with the field book, and it says, 16 lines from the bottom of page 123 : "The field book Exhibit No. 1 was the book prepared on the spot by the officer of the Land Registry detailed to do the work, and they were made after local enquiries. For some years the field book was acted upon without any further formalities and certificates of registration were issued on the strength of this field book." Here the Court wants to show the bigger authority which the field book possessed, and therefore, according to the trial Court, the mention "of Troodos" to qualify the river Karkotis was well founded. This is roughly what I see to be the attitude of the Court on this maybe. Now, my Lords, I tried to explain . . .

Chief Justice : They sum up with what may be the conclusion that they drew from the field book and title deeds in the middle of page 123 in this way : "In our view all these descriptions of Petra water in the title 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." This appears to be the summary . . .

Mr. Houry : It is a general statement made by the Court . . .

Chief Justice : The conclusion which they drew from the evidence and the field book. But it doesn't refer to the Karvounas arm.

Mr. Houry : Whatever this may mean, I have shown yesterday how this field book was not acted upon by the Land Registry Office in any case. Witness No. 11 who makes a statement such as the one quoted by the Court at the bottom of page 49 of the notes. He did say : "This practice continued for a few years. Later on when there was a dispute as regards the property in question then a local enquiry would be ordered to be carried

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out before the registration." Practically repeated word for word by the trial Court. But on cross-examination which appears on page 49, he pointed out one example in support of his assertion that the field book was acted upon by the L.R.O. and he gives us an example, registration No. 2593. Almost immediately he went on to say, and these are his words: "We had some registers where this registration is shown, but these registers are destroyed." Now, the Court adopts a statement made by this witness without giving the slightest attention to what was illustrated from his cross-examination. The one instance that he mentioned is shown to have existed in older registers. Now, could the field book be the source of 10 authority of making the new registers when that same registration existed in the previous registers which has repeated completely the statement of the witness that the field book was acted upon without any further formality. At page 50, the same witness points out the same registration and says: "It was written afterwards," whatever that may mean. It goes on to say he doesn't know. "I do not know." This is exactly what is written in page 50 in cross-examination continued. "Show us a registration taken directly from this book?—A. 2593. Q. But 2593 was written afterwards? —A. I do not know." Again the L.R.O. clerk Djeddet Mirata, tells the Court that Exhibit 13 (C-1)—I am quoting: "It may be that they were 20 copied from the field book . . ." this occurs at page 97. Both clerks seem to have been anxious to give as much authority to the field book as possible. He then answers emphatically that they were all copied from Exhibit 2, and in answer to a question put by the Court this witness admitted that the field book is not the first record in respect of that item.

Chief Justice : Is it necessary to go through all that evidence again ?

Mr. Houry : It is only in my comments as to the weight which the Court seems to have given to the statement of the witness that we see that in another instance they were acted upon by the L.R.O.

Chief Justice : Yes, but the Court seems to have regarded the field 30 book as of importance only on the question of whether the name Karkotis river stopped at the river below Kakopetria or included water above, doesn't it ?

Mr. Houry : It only lent importance to the field book in so far as the description of the river Karkotis being "of Troodos," and then it interprets its meaning "of Troodos," and it puts in Karvounas river. A few instances of this field book—I shall finish in a minute, after my comments on it—they translated copies of the entries of the field book which the Registry was good enough to supply us with. We have Exhibit 13 (C-2). Your Lordships will see that this entry in the field 40 book was made on the 10th August, 1893. We have a previous possessor, that is important, registered as his property in the L.R.O. in 1883, so the field book made in 1883 is really nothing more than to record the registration already in the hands of a man, probably a man who went on the spot and enquired and said: "I am here to make a list of the owners of water," and the men who brought their title deeds, he just recorded them in the field book and this is an illustration of how these really occurred. It already existed 10 years before. The other instances all lend support, in my view. In all these cases the field book makes no remark, but merely mentions the previous owner of the property. The 50

trial Court makes this statement on page 124 : " This evidence goes to show that Kakopetria rights in respect of the water running in the rivers above Kakopetria are not unrestricted and that the system of fixing turns by observing movements of the stars is not an unfamiliar system in that part of the country."

Chief Justice : Whereabouts ?

Mr. Houry : Twentieth line from the top of the page, my Lords, in conjunction with the previous statement. I do not think the record is correct. " It is not worthy," it should be " noteworthy." " Not worthy "

10 is a mistake, it should be " noteworthy."

Chief Justice : Will you read the passage ?

Mr. Houry : " It is noteworthy that two witnesses of the Defendants who came from Galata, Alexandros Savva and Prokopis Kounas, spoke about the water rights of Galata and they said that they take water from Kapathokas and Vassiliko dams from the rising of the Pleiads to the sunrise until the 28th August and from the 28th August onwards from the rising of Orion up to sunrise and this on certain days of the week according to the former witness. Some Kakopetria properties are irrigated from the said two dams according to Har. Violaris, Defendants' witness."

20 From this circumstance, the Court goes on to draw this inference : " These two dams are in the river flowing above the two bridges in Kakopetria. This evidence goes to show that Kakopetria rights in respect of the water running in the rivers above Kakopetria are not unrestricted and that the system of fixing turns by observing movements of the stars is not an unfamiliar system in that part of the country." This inference, in my submission, is again corroborated. The rights of the Kapadhoka and Vassiliko dams were never at all in issue. If a man in Kakopetria happens to have lands that are irrigated by the Kapadhoka and the

30 is his own personal concern, and it would be unfair to attach to the Kakopetria village a knowledge which a man may have gained because he has a bit of land. We are only concerned with the four dams of Kakopetria, we are not concerned with any particular individual in Kakopetria who owns a bit of land which is irrigated by the other dams. It is quite conceivable that a Kakopetria man might have land at Petra which is irrigated from the Petra channels. That would not alter the rights of Kakopetria in any way, and in doing so, my respectful submission is this, that the trial Court confused the rights of the people of Kakopetria with the rights of one of the inhabitants of Kakopetria who happens to

40 own lands irrigated by Kapadhoka or Vassiliko. In other words, if the movements of the stars are essential to regulate the Kapadhoka and Vassiliko dams, that does not necessarily mean that those movements are applicable to the dams higher up.

Griffith Williams J. : And do you suggest that it is suggested that this system of measuring the stars was not unfamiliar ? It more or less means that it is not an unfamiliar system ? It was suggested in this case that it was an unfamiliar system, Kakopetria people knew nothing about it. The Court found that they did.

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Mr. Houry : The Kakopetria people knew that they irrigated their lands from the four dams. They never observed the movements of the stars. They never irrigated from the Kapadhoka and Vassiliko dams.

Chief Justice : It says that, the Judge says that some of the Kakopetria properties were irrigated by those dams.

Mr. Houry : It means some properties from Kakopetria. It is not in evidence that the properties irrigated are within the Kakopetria village at all. By saying Kakopetria villagers the trial Court must have understood its mistake, some properties of some person from Kakopetria. Because it is in evidence, out of the exhibits, that Salim Effendi stated 10 that the Kapadhoka and Vassiliko dams are exclusively Galata dams.

Chief Justice : One of them is above the junction.

Mr. Houry : Both of them at the foot. Both of these dams reach the foot of Ayios Nicolaos river.

Chief Justice : You marked Vassiliko below the junction.

Mr. Houry : In which plan, my Lords? I was very careful yesterday.

Chief Justice : There is Kapadhoka, that is above the junction, and Vassiliko is marked below.

Mr. Houry : That is the red mark which I made yesterday.

Chief Justice : What is this, Vassiliko? 20

Mr. Houry : That is a mistake. It is just before the junction.

Chief Justice : Doesn't it show that some people, in respect of lands not in Kakopetria village, had some control of dams above the junction?

Mr. Houry : Yes, that is so. Some people who had lands in Galata, some Kakopetria people who had lands in Galata irrigated by these two dams must undoubtedly have known the system of taking water from the Kapadhoka and the Vassiliko dams.

Chief Justice : That is to say, there where people not in the Kakopetria village who had some rights in those dams which were above the junction.

Mr. Houry : Yes, above the junction. 30

Chief Justice : So doesn't that show that the rights of the Kakopetria people in those two dams were not unlimited?

Mr. Houry : It shows, my Lords, that the rights of people from Kakopetria owning lands in Galata, irrigated by those two dams, are not unrestricted. That has nothing to do with the Kakopetria people at all.

Chief Justice : But other people owning land outside Kakopetria village irrigable area, if they have rights in those two dams, doesn't it show that the Kakopetria rights in those two dams are not unlimited?

Mr. Houry : My Lords, the way I understand it, and respectfully submit, is this: it shows that people who are from Kakopetria who happen 40 to own properties in Galata irrigated by those two dams, the Karvounas and Vassiliko, must be aware this is the only way that they can irrigate their lands. But it doesn't show at all that the Kakopetria people as such are

aware of this system. Those people from Kakopetria who owned lands in Galata must know. I am a Limassol man and I have property in Syria. It doesn't mean that my knowledge of the formalities of Syria is knowledge of the formalities of Limassol.

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Chief Justice : There was a system of control of these two dams.

Mr. Houry : Where ?

Chief Justice : Vassiliko and Kapadhoka.

Mr. Houry : We did not care to enquire. It is not in issue. We did not bother about making due enquiries concerning the two dams. Neither
10 did the Plaintiffs claim anything against us as regards those two dams.

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Chief Justice : That is perfectly true.

Mr. Houry : We did not enquire, it is not before the Court. The Kapadhoka and Vassiliko dams. There is no issue before the Court. Then the trial Court gave a great deal of consideration to Exhibits 5 and 6. I have submitted a good deal about these two exhibits and I am not going to annoy your Lordships any more about it. If Exhibits 5 and 6 are receivable in evidence, we should give them only that measure of weight which the Court would have given to Salim Effendi had he been allowed to come to Court and give evidence.

20 *Chief Justice* : That is what the Court says.

Mr. Houry : That view is adopted by the trial Court. I am glad that the trial Court adopted this view. I am glad the Court did express itself in this way, but the question arising is this. Assuming Salim Effendi had come to Court and given evidence, the Court would have found that all his evidence is hearsay from start to finish, and it would have been rejected. Instead of rejecting it, as he has stated, the trial Court gave to it a weight which was not due to these two exhibits. If the mission of Salim Effendi was to enquire into the features of the running water of Petra, he had no mission to enquire into the rights of the people of Kakopetria. Now,
30 this is what the trial Court says about it, the inference it draws about these exhibits. Page 124 of the notes : " These have been produced from the archives of the Land Registry, i.e., they were in proper custody and we have no doubt that these documents were purported to be a continuous record. Salim Effendi in carrying out his local enquiry must have gathered information about the water rights of respective villages from competent persons who had personal knowledge of the fact." Isn't that too far-fetched? Salim Effendi must have gathered personal knowledge of the fact. What is the justification of the finding of the Court below ?

Chief Justice : Its report would be worthless if he didn't.

40 *Mr. Houry* : My Lords, of course we have to draw the distinction between the enquiry made by a man such as Salim Effendi, and a man whose duty it was at the time to record information of which he had knowledge. May I give an example ?

Chief Justice : I understand it. It is quite clear.

Mr. Houry : If the L.R.O. whose duty it is to have declaration for transferring his deed, and you have his record, that record is a public

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document because it was his duty to record it in the ordinary course of his business ; that would perfectly be admitted, but the man whose business it is to be a surveyor and he is asked to enquire about something, about facts in a village, and he goes there and makes an enquiry. He makes an enquiry and makes a report. Could we, from the same circumstances that he made an enquiry and a report, assume that the source of his information was from persons possessing first-hand knowledge? In my respectful submission, it would not be so. We have to have positive evidence to show us that Salim Effendi conducted an enquiry in due form and obtained information from persons who possessed first-hand knowledge. 10

Chief Justice : What does a continuous record mean, as used in that passage ?

Mr. Houry : I do not know, my Lords.

Chief Justice : Section 4.

Mr. Houry : It is an effort to bring that document within the four corners of section 4 of our Evidence Law. It is a kind of innovation, there is nothing in the evidence.

Chief Justice : What does continuous mean as used in that section of the law ?

Mr. Houry : If your Lordships will be generous enough to consider 20 the example I have just submitted, it would give you what continuous meant and if an L.R.O. officer is allotted the job of accepting transfers of property, and he is there on the job accepting transfers and he produces his file of transfers which he accepted, they would naturally all contain the serial numbers 1, 2, 3, 4, 5, 6 and that would be a continuous record, and a record of that kind would be admissible in evidence under section 4 of our Evidence Law. The word continuous here has no justification at all in the case, my Lords. It was only inserted to bring these exhibits, to make them admissible under section 4 of our Law, otherwise, there is no meaning to it. The trial Court ends up the judgment with these words : 30

“ 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.”

Page 125. We now come to the question of the springs. The trial Court have decided on the question of the springs, and say that this is not a matter in issue. Page 126, my Lords. This is what the trial Court has to say :

“ It has been very difficult indeed for the Court to see the relevancy to the case of the existence of these springs and of the alleged amount discharged by them into the river bed. Petra people 40 has no claim over the private spring waters of Kakopetria and this is not a matter in issue if spring waters not belonging to the main river or to its tributaries are allowed by private owners to run into the main river i.e. Karkotis, we fail to see how the Court can protect their interests once such owners choose to allow such waters fall into the said river.”

Here, I would like to say that the trial Court was mistaken completely, it went completely wrong in assuming that the spring water is not in issue. It is paragraph (F), page 7, and I am reading from the defence :

“(F) From the points where the water is taken by the said dams from the rivers ‘Karvounas’ and ‘Ayios Nicolaos’ up to the point where the said rivers join and form the river ‘Karkotis’ and within the boundaries of the village of Kakopetria, there is a number of water springs, the water of which joins the water of the rivers ‘Karvounas’ and ‘Ayios Nicolaos’ and which water belongs exclusively to the inhabitants of Kakopetria or to some of them.”

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10 And the defence goes on to say how the water of these springs is even more than that taken by the Kakopetria people for the irrigation of their own lands. The Plaintiffs put this matter in issue by their Reply, which may be found at page 10 of the notes, and I am reading from paragraph 1 of the Reply :

“Plaintiffs deny generally the Defence and join issue with the Defendants upon their Defence.”

20 By this the question of the spring water was put in issue. The Court finds that not only is it not in issue, but it is not relevant and it refused to consider the question at all, and in this, our respectful submission, is that the Court did not completely adjudicate upon the issues. I do not know what the alternative will be, my Lords, it is for the Defendants a very serious matter, and if the Court did not make any ruling on this question of the springs because it was not in issue, the alternative would, therefore, be to set aside the judgment of the Court.

Chief Justice : What do you say the importance of it is ?

30 *Mr. Houry* : The importance lies in this. If the water of the springs at Kakopetria is Kakopetria property, and it is allowed to go into the rivers Karvounas and Ayios Nicolaos and is equivalent to the water taken by the Kakopetria people, even if we assume that the taking of the water by the Kakopetria people at certain hours was unauthorised, it shows that the Plaintiffs have nothing to complain about, because they get a larger quantity of water from Kakopetria than the water actually taken by Kakopetria, and there would be no case for an injunction because the basis of the injunction is that there must be an injury, a damage which the Petra people are suffering and instead of suffering any damage, they are earning a benefit. Then, finally, the Court referred to the portion of Law 26 of 1945 concerning the acquisition of rights upon which we invited the trial Court to make a finding. The trial Court found as a fact that the Petra people did not discontinue the exercise of their supposed water rights for 30 years.

40 *Chief Justice* : What is the point under this law, will you give it to me, please ?

Mr. Houry : Law 26, which I cited yesterday.

Chief Justice : What section ?

Mr. Houry : Section 9.

Chief Justice : Yes.

Mr. Houry : In virtue of the second proviso, rights to water, which otherwise required an *ab antiquo* user, are now capable of being acquired by a user of 30 years. Now, the finding of the trial Court is that the

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Petra people did not discontinue the exercise of their supposed water rights for 30 years before 1941. This appears at page 126 of the judgment. Now, this finding, in my submission, is untenable, and I would humbly beg your Lordships to draw the inference that the trial Court, on the major issues in the case, could not believe the evidence of the Plaintiffs without the aid of the estimation of documentary evidence. On the major issues, the trial Court was helpless to believe the evidence of the Plaintiffs without the aid of documentary evidence to corroborate, and yet, in this case, a case upon which there is no hope of documentary evidence concerning the user for the last 30 years, the Court has no hesitation in 10 its finding that the Petra people did not discontinue their water rights for 30 years at all.

“On the contrary, we think that the acts of interference on the part of Kakopetria were not of a continuous character until after the year 1941 when the present action was instituted. 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 their rights to the water from Frantziko, Ayios Nicolaos, Appliki and Karydhi dams to the exclusion of Kakopetria people during the 20 hours they claim.”

I need only say on this matter there is no documentary evidence. This question is of no importance because the burden of proof lies on the Plaintiffs—continuous user establishing their claim of *ab antiquo* possession or otherwise for 30 years before they brought their action—and in order that they should succeed in establishing their claim, the Plaintiffs produced 11 witnesses, of whom two are L.R.O. officials. The remaining nine witnesses were wholly insufficient to establish the user for 30 years. I am not going to analyse any further the evidence on this matter. If there is anything my learned friend has to say, I will be able to show that the 30 witnesses for the Plaintiffs were wholly inadequate to establish any continuous user for the water in the manner which was described by the Plaintiffs.

The Court rose at 11.15 a.m. for a short break.

Court resumed at 11.30.

Mr. Clerides : May it please your Lordships. The law applicable to this case is section 124 of the Land Code and Article 1265 of the Mejelle, and section 124 runs as follows :

“In disputes as to rights of watering crops and animals (haq-i-shurb) of irrigation and over water channels only *ab antiquo* 40 usage is taken into account.”

And Article 1265 of the Mejelle :

“Everyone can irrigate his fields from rivers which are not of a mulk nature, and can open a canal or water channel to irrigate his field, and to build a mill. But it is a condition that he must not damage another. Therefore, if he cause damage to the public by the overflowing of the water, or the water of the river is entirely cut off, or if he prevents the movements of boats, he is prohibited.”

These articles have received interpretation and have been applied in the following cases. In the case of *Raghib v. Gerasimo*, Cyprus Law Reports, vol. 3, page 105. At page 122 is the passage I am going to cite to your Lordships :

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10 “ It is clear from Article 1265 that anyone may make use of the waters of public rivers for the purpose of irrigation on the condition that he does not injure other persons, e.g., by taking all the water of the river. This must mean that any person is entitled to make such reasonable use of the water for the purposes of irrigation as is not inconsistent with the rights of other persons.”

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The next case in which these articles of the law have been considered is the case of *Antonake Papapanayi v. Joanne Jasemidou*, reported in volume 6 at page 85. I cite from page 89 :

20 “ The defendant in taking water to irrigate his fields is subject to a condition that he must not damage another (Mejelle, Art. 1265). He must not interfere with its use by others on the river either above or below him. He has no right to intercept the regular flow of the river if he thereby interferes with the lawful use of the water by others, and inflicts upon them a sensible injury. The right of user depends upon the particular circumstances of each case, upon the volume of the stream, and the amount of the injury inflicted thereby upon other persons. It is a question of degree, and it is impossible to define precisely the limits which separate the permitted use of the river from its wrongful application. The only limit to the user which the law prescribes is that the person using an unowned river for irrigation must not damage another.”

And the next case is the case of *Papaphilipou v. Christodoulos Georghiades*, at Volume 7, page 1. The head note is as follows :

30 “ A public river is a river which is not possessed by any person. The right of using a public river is as set out in the Mejelle. Where a question arises between two or more persons as to the right of user for irrigation, the way in which the lands of the parties have been irrigated from time immemorial will alone be considered. No one can acquire by prescription rights over a public river other than those given him by the law. When any one claims a user of the water of a public river for irrigation in excess of that enjoyed by the general public and based on immemorial mutual dealings between himself and others, he should state at the settlement of issues what are the *ab antiquo* mutual dealings with reference to irrigation as regards
40 his own lands and those of the other party to the dispute.”

This has been done by the Plaintiffs in this case. In the Statement of Claim, page 5, paragraph 4, they give in detail their rights of the irrigation. The Respondents are giving full details of the rights to irrigate. And in paragraph 10 of the Statement of Claim they say what are the rights of the Appellants. Now at page 3 of volume 7 the case I have cited, the judgment reads as follows :

50 “ It follows from the enactments above stated and the commentaries on them that the Defendants were entitled to dam the river Yalia and use the water for irrigation or for a mill provided that they did not damage any others. As to the acquisition of

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further rights by *ab antiquo* user there are two enactments to be considered :

“(1) Art. 1675 of the Mejlle enacts that ‘no attention is paid to lapse of time in actions about lands the benefit from which belongs to the public such as (amongst other things) a river.’

“Ali Hider states that in this Article the rivers meant are rivers in which a village or several villages are interested.

“(2) In Art. 124 of the Land Code it is enacted as follows : ‘In disputes about the right to a share of a stream and of irrigating, 10 and water channels, the mutual dealings which are existing from time immemorial are alone considered.’

“We are of opinion that these two enactments must be read together and that it was not intended by the later enactment contained in the Mejlle to repeal the enactment in the Land Code ; and that the meaning of the two enactments is that no one can acquire by lapse of time rights over a public river beyond those rights which are given him by the law, but when a dispute arises between two or more parties as to the exercise of rights of irrigation, the way in which the lands of the parties have from time immemorial been 20 irrigated will alone be considered.

“This rule applies as well to rivers owned in shares as to public rivers. The illustrations given by Atuf Bey are as follows : ‘If for one part of the lands having a fixed share of a running stream, which is owned in shares, there is a right to the share of the running water from sunrise to noon, and for the other part a right from noon to sunset, and a dispute arises, this dealing between them which has existed from time immemorial is observed and the dispute is settled in accordance with it. Therefore the owners of the other share in the stream cannot object to the water running to the fields 30 of the person who has the share from noon to the setting of the sun or change the mutual dealings which have existed from time immemorial.’

“Again he says : ‘If the inhabitants of one village have lawfully acquired their immemorial right to irrigate their lands from water rising in another village the inhabitants of the other village cannot say “we will not permit you to irrigate because the water rises in our village.”’ The above examples seem to refer to rivers which are not public, but the principles deducible from them apply equally 40 to public rivers. The dealings between the parties which are observed would appear to be such dealings as have existed from time immemorial, and to which objection might have been taken, as for example where owners of land have given up their right to take water for a certain defined time, or where they have allowed another to take benefit from water from time immemorial when they might have objected. Mere user without interference with the right of another would not seem to constitute a dealing between the parties within the meaning of the law, nor would such user although existing from time immemorial be decisive in any dispute which might arise. As long however as a person does not exceed 50 what has been the immemorial manner of dealing between the owners

of his land and the owners of other lands in the sense above indicated, with regard to sharing the benefits of a stream for the purposes of irrigation, the others cannot complain that such user causes damage. Having considered the law we will now consider the issues raised."

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And then the Court considers the issues and at page 5 it repeats what is in the head note in the second paragraph :

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10 " If a party to a dispute wishes to assert an *ab antiquo* right based on reciprocal dealings from time immemorial under Art. 124 of the Land Code, he should set out what is the mutual dealing as to irrigation between himself and the other party to the dispute from time immemorial, or rather what has been the manner of dealing as regards the lands of which he and the other party are owners."

Then the next case in which these sections of the law have been cited is the case of *Sofronios Louka v. Hadji Papa Symeon*, at Volume 5, page 82. This case is dealing with the river, the same river which we are dealing with, which we are considering to-day. I am reading from the judgment :

20 " The Plaintiffs' claim is to restrain the Defendants from interfering with the right of the inhabitants of Galata and Oros Sina to water from the river Karkoti by unlawfully cutting and conducting by the channel Franziko a larger quantity than they are entitled to thus preventing the Plaintiffs from taking that which they used to take from olden times ; and for damages.

" The Defendants denied that they had taken any excess of water, and denied the damages. And the issues settled for trial were, ' 1. have the Defendants interfered with the Plaintiffs' rights ? and 2. damages.'

30 " The Plaintiffs sue both for themselves and as representatives of Galata and Sina Oros. The Defendants are inhabitants of Kakopetria." (the present Appellants).

Mr. Houry : Why do you say " present Appellants " ?

Mr. Clerides : The present Defendants.

Mr. Houry : As far as the principles are concerned, it is all right, but as regards the facts, he tried to get the file into the Court.

Chief Justice : He is entitled to quote it.

40 *Mr. Clerides* : " During certain fixed hours in each week the people of the three villages named are entitled at the same time to use the river water for the irrigation of their lands. During the remaining hours other villages are entitled to the water. The mode of taking the water is explained in the judgment of the District Court as follows : ' This water is taken from the river by means of a series of dams which are mostly washed away in the winter, but re-made for the summer in June each year. These dams turn, each of them, so much of the river water as is stopped by each dam, into channels running directly through the middle of the irrigable lands, and carrying the water by that route back into the river again below.

" " During the hours in which the parties are all entitled to be irrigating their lands at once, a moveable water dam called a " Koftusa " is inserted in each of these channels and prevents it from running on down

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to rejoin the river ; at the same time side channels are opened leading from the main channels into the lands to be irrigated, and by this means the water is distributed over the land.

“ ‘ When these hours come to an end, the Koftusas are removed, and the water runs on down through the channels, rejoining the river, and is used lower down by another set of dams and villages in Evrychou, Tembria, and Korakou.’

“ There are six dams which take the water to which the Plaintiffs and the Defendants are entitled. The uppermost of these is Franziko dam, which turns the water into the channel by which the Defendants’ lands are watered. What the Plaintiffs have tried to prove is that by ancient custom 10

the channel served by each dam takes an amount of the water proportionate to the area of land to be irrigated by that channel, and that the proportions are : two-eighths for Franziko, two-eighths for Sina Oros, and one-eighth for each of the other four channels. The District Court in its judgment said : ‘ It is claimed by the Plaintiffs that by well-established custom *ab antiquo*, the owners of the lands watered by means of each dam are entitled to use a fixed proportion of the water in the river and no more. The Plaintiffs further claim in this case that, in the summer of 1897, the Defendants, some of whose lands are irrigated by the water taken by Franziko dam, the topmost of this series, took more than the proportion of water to which they were entitled, thereby depriving the Plaintiffs of water to which the Plaintiffs were entitled, and causing them considerable damage ; and the Plaintiffs allege that the proportion fixed by custom for Defendants is one-fourth of all the water coming down the river to Franziko dam.’ And then after discussing the evidence, the Court went on as follows : ‘ The conclusions to which we have come are as follows : the evidence as to the amount of lands watered by each of these series of dams we do not consider that such a proportion as alleged has been proved to exist among them, though we consider that the proportions tend roughly in that direction. As regards the custom relied upon by the Plaintiffs that Franziko dam is entitled to take one-fourth only of the water coming down to it, we consider that the old system of allowing so many hours of the river water to this series of dams to be taken at the same time, was based on the idea that that water would suffice to water all these lands ; in an ordinary year it does so, but in dry seasons, not provided for in the system, there have been quarrels, but none of them has led to the establishment of any system by custom or agreement. Finding therefore that the Defendants have not done anything contrary to the established system, by raising their dam or altering its construction to the detriment of the Plaintiffs, we give judgment dismissing the action with costs.’ 20 30 40

“ We agree with the District Court that the ancient custom alleged by the Plaintiffs was not proved. But we do not think that that finding concludes the matter. The complaint is that the Defendants in the summer of 1897, took more of the water than they were entitled to take, ‘ thus preventing the Plaintiffs from taking that which they used to take from olden times,’ and the issue to be tried was, ‘ have the Defendants interfered with the Plaintiffs’ rights ?’ And although the custom for which the Plaintiffs contended has not been proved, it does not follow that the Plaintiffs have no rights with which the Defendants have interfered. The villages to which the Plaintiffs and the Defendants belong are entitled to 50

the water of the river for a certain number of hours in each week for irrigation purposes. In ordinary years . . .” and so on, and then they deal with the question and then they refer to page 86 of Article 224 of the Land Code, and proceed with the judgment.

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Having dealt with the law applicable to the case, my Lords, I now propose to deal with the objection raised as to the admissibility of evidence and the first objection is with regard to Exhibits 1 (A), 1 (B) and 1 (C), the survey maps. There is in evidence that these survey maps were made under Law 5 of 1880. By section 1 the High Commissioner may direct a
10 survey. By section 2 the Commissioner is entitled to appoint a Director to survey. By section 3 owners and others are required to attend and give information when required, and may be fined by the Director of Survey if they refuse to. By section 4 power is given to enter lands for the purpose of survey, and within the other sections, section 8, the occupants are required to point out the boundaries. These are the points for the purpose of my argument. Now, on the 10th January, 1905, the High Commissioner appointed the Registrar-General as Director of Surveys. It is given in the Gazette of 1905, at page 5486 :

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“ Under the power and authority vested in him by The Revenue
20 Survey Ordinance, 1880, His Excellency the High Commissioner has been pleased to appoint the Registrar-General or the officer acting as such for the time being to act as Director of Survey for the purposes of the said Ordinance.”

In 1907 Law 12 of 1907 was enacted providing for the Registration and Valuation of Immovable Property, at page 431. Under section 5 of that Law it is provided that :

“ Where a general registration and valuation has been directed
30 to be made of all the immovable property in any village and a plan of the village lands and of the various holdings as surveyed, together with a statement of particulars of the areas, boundaries and names of the owners of the several holdings, has been furnished to the Mukhtar the following provisions shall have effect :

“ (1) The notice required by section 4 to be served upon the unregistered owner shall be a good and sufficient notice for the purposes of the law if it specifies the nature and extent of the property and the fees payable in respect of the registration of it with a reference to the number of the plot and plan in which the property appears.”

Then subsection (2) of the same section :

“ In lieu of the notice referred to in the concluding portion
40 of section 4, subsection (1), there shall be posted for general information at the place where public notices are usually posted in the village a notice to the effect that the plan and particulars aforesaid have been so furnished to the Mukhtar.”

And then subsection (3) :

“ Every owner of property in the village is empowered on
50 application to the Mukhtar to obtain access to and to make any extract from or copy of the plan and statement of particulars aforesaid, and any Mukhtar who fails on demand to give access to or to allow extracts or copies to be made of such plan or particulars shall be liable to a fine not exceeding two pounds.”

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Now, under the strength of that law, a notice, an order for general valuation in the District of Nicosia was published in the Gazette of 27th October, 1911, at page 7582 :

“ Under the powers vested in him, His Excellency the High Commissioner is pleased to direct that a general valuation of immovable property be made in the following areas.”

Then in 1914 in the Gazette . . .

Chief Justice : But that order referred to the last one you read, to an area with which we are concerned.

Mr. Clerides : Nicosia District, and this is Nicosia District. General valuation of the whole of Nicosia District. Then in 1914, an order was published in the Gazette on the 4th December, 1914, under notification 12696 authorising a general survey to be made of the Nahieh—it is sub-district—of the Dagh, that is Kythrea, Morphou and Lefka. Kakopetria is in this Nahieh of Lefka. Now these survey maps were prepared in 1925 and 1926.

Griffith Williams J. : 1 (A), (B) and (C) ?

Mr. Clerides : Yes, 1 (A), (B) and (C), and this appears at page 43 of the record. “ From the extracts of the register plan No. 33/20 was made by A. Paraskevas who commenced work on the 25.5.25 and finished 20.6.25, Exhibit 1 (A).” Page 43 of the notes, top of the page, and a few lines further down when the witness continues. “ Also plan No. 37/28 commenced on 14.9.25 and finished on 3.10.25 also by A. Paraskevas. Exhibit 1 (B). Plan No. 37/36 commenced on 6.9.26 and finished 25.9.26.”

These plans, my Lords, must have been prepared at the spot, and surveyed, because they are surveys, they are survey plans made to scale, and these plans, in accordance with the law which I have cited, had to be given to the Mukhtar, a copy of that to be given to the Mukhtar, and at page 81 of the record the witness for the defence, Thrasivoulos Ioannou, who was the Mukhtar of the village, admits that he had plans of the Kakopetria village in his hands. He says :

“ When I was a mukhtar I had the valuation book with me. I had also the plans of the village. I saw in that plan the names of rivers. I saw the river Karkotis in the plan. It is from the two bridges.”

Upwards. The plans were duly prepared under a law by the officers whom I have mentioned and copies of them were supplied to the mukhtar of the village and in accordance with the law he was entitled to issue the plans and take copies of them. Nothing referred, my Lords, to these facts. Now I come to the law as to their admissibility. In my submission, these plans are admissible under section 4 (1) of the Law 14 of 1946, but being copies they were admitted under section 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.”

Now, these maps are records of properties made under the Laws I have cited which were in force and are still in force—no, the last one is not, it has been repealed—and there is evidence that they were certified copies, certified by the Registrar-General. This must be seen in page 37 of the record. Now, under section 41A (2) they were documents forming part of a record purporting to be a continuous record.

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Chief Justice : Continuous record, what does that mean ?

Mr. Clerides : I take it to mean, in the sense that it is complete.

Griffith Williams J. : Does it mean a record like a death register or
10 something of that kind, which is kept continuously from day to day ?

Mr. Clerides : Well, it says it forms part of a record purporting to be a continuous record. Well, of course, a general survey is continued for years and it was made in parts and it went on continuously.

Griffith Williams J. : For continuous use.

Mr. Clerides : Yes.

Griffith Williams J. : Not being continuously made ?

Mr. Clerides : It may be that they were going on still in some parts of the Island ; but it was a continuous record. These are parts of a continuous record recording all the lands and all the rights of ownership
20 all over Cyprus.

Griffith Williams J. : Couldn't the person who made these plans be said to have personal knowledge of the matters dealt with ? Doesn't he have to acquire personal knowledge before he makes his plan ?

Mr. Clerides : Yes, with regard to information, because he couldn't go . . .

Griffith Williams J. : Most people's knowledge is from information.

Mr. Clerides : The position is this, he had to record the thousands of properties and he couldn't know personally the owners of the properties, and the extent of the properties of each one. He had to rely on information
30 supplied to him by competent persons, and he had to acquire that information, in order to make that record, from persons who had or might reasonably be supposed to have personal knowledge of those matters.

Now, under section 4, subsection (3), at page 51 :

“ 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.”

And these maps were not made for the purpose of any litigation or by any personal interest owing to this dispute. Then subsection (5), section 4 :

40 “ 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.”

So the Court was intended to draw from the form and from the contents a reasonable inference . . .

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Griffith Williams J. : What subsection is that ?

Mr. Clerides : Section 4, subsection (5), at page 51. The Court having before them those plans, and having to decide their admissibility in accordance with the above provisions, could draw a reasonable inference from the form and the contents of the document that they were prepared on information given by persons who might reasonably be supposed to have personal knowledge of the matters stated in the document. And it is in evidence that the officers who prepared these plans in the course of their duty imposed on them by law, had no interest in the matter to report anything incorrect and with the view that no anticipation of any proceedings either pending or to be made in future, the Court, I submit, rightly admitted those documents. 10

Griffith Williams J. : They are over 20 years old, aren't they ?

Mr. Clerides : Yes, but section 4 deals with the documents. It is general. Then section 5 deals with the weight to be attached to such documents. Page 52, section 5 :

“ In estimating the weight, if any, to be attached to a statement rendered admissible as evidence by section 4 of this Law, regard shall be had to all the circumstances from which any inference can reasonably be drawn as to the accuracy or otherwise of the statement, and in particular to the question whether or not the statement was made contemporaneously with the occurrence or existence of the facts stated, and to the question whether or not the maker of the statement had any incentive to conceal or misrepresent facts.” 20

In my respectful submission, these three documents have been rightly admitted as evidence in the Court below.

Now, the second exhibit to which objection has been taken is Exhibit 2. That is the field book. That was prepared again in accordance with the evidence on the strength of Law 5 of 1880 and it was prepared in 1893. Evidence as to the preparation of this document appears at pages 37-38, my Lords. 30

“ There is a book called field book. The field book is written in Turkish. The book was compiled in 1893 by clerks sent out by Tapu officials. It was prepared in 1893 and that book is giving particulars. That was prepared locally and in performance of their duties, part of their duties.

“ *Mr. Houry* : I object.

“ *X'n continued* : The whole book refers to Petra water.

“ *Mr. Clerides* : The idea is to produce it and show how at the time the inhabitants of Petra who had water registered in their names how that water was described. That is why I want the production of this old register. 40

“ *Mr. Houry* : My grounds are these . . . ”

Well, I needn't refer your Lordships to the whole thing, but in the evidence, I might say shortly, it is stated that it was made under Law 5 of 1880, and that it was made at the spot, and is the original. Now, the field book is admissible in evidence on two grounds. First of all because it is an ancient document. Now, our Evidence Law in section 3 makes

the Law and Rules of Evidence, as in force in England, 5th November, 1914, applicable to Cyprus save in so far as other provision is made under the Law. So the English Law is applicable.

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Griffith Williams J. : Is there no other provision in our Law ?

Mr. Clerides : There is provision, but this provision in our law is a general provision, and it doesn't deal with ancient documents. Our section 4, even if a document is not ancient, gives the conditions of its admissibility.

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In the 8th edition of Phipson on Evidence, page 514 :

10 “ Ancient Documents. Private documents 20 years old produced from proper custody, and otherwise free from suspicion, prove themselves, and no evidence of the handwriting, signature, sealing or delivery need, in general, be given. The twenty years date from the execution of the document, and, even in the case of wills, not from the death of the testator. In the case of documents of title, however, acts of possession thereunder should be shown, though the absence of such evidence goes merely to weight, and not to admissibility. The period used to be forty years and the first case applying the term of thirty seems to be *R. v. Farrington* (1788), 2 T.R. 466.”

20 So it is admissible as being an ancient document, and it is also admissible, in my submission, under section 4 of our Law. I am referring your Lordships also to section 15 of our Law which may be of help. Law 14 of 1946, section 15 :

30 “ In any proceedings, whether civil or criminal, there shall, in the case of a document proved, or purporting, to be not less than 20 years old, be made the same presumption which before the commencement of this Law would have been made in the case of a document of like character proved, or purporting, to be not less than thirty years old.”

Griffith Williams J. : That would reduce the period in the English Law from 30 to 20 years.

40 *Mr. Clerides* : The Court, in considering the admissibility of this field book, saw that it was a book containing in each page a record of one piece of property, that it was done by an official on local inspection and, of course, on information received from persons who were reasonably supposed to give correct information under the Law, and they were entitled, in considering the admissibility, to draw a reasonable inference that this field book was properly made. It is in evidence that there are thousands of field books, of such field books in the L.R.O. prepared since 1880 for the purposes of the revenue survey and for the registration of the properties of individuals and corporations and generally for registration of property, and they have been used, and they are being used still, for the purposes of registration.

Originally, soon after their preparation, they were the basis upon which the titles were made. But then, later, on account of the devolution from private sales when one wanted to apply to get a title deed for his property, they thought that it would not be safe to rely on the information which was given in the field book and when a new local enquiry was made,

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the field book was taken to the property by the L.R.O. clerk who checked and who took the necessary information to enable a title deed to be given for a certain piece of property. This appears on page 38 of the record.

Griffith Williams J.: Would the new enquiry take the place of the old enquiry to form a field book ?

Mr. Clerides : No.

Griffith Williams J.: Why did they cancel part of the field book then ?

Mr. Clerides : Once that point is raised, I am referring your Lordships to two pages where the word "cancelled" appears, and on one page 10 it says: "Cancelled, see No. 636/1903" then "cochan may be issued through Registrar General. 2.11.1902." On the same page, that is, on the page which stated that it is cancelled, there is a note "cochan may be issued. Title deed may be issued." Cochán is title deed. Then in another place as well I found in two places "cancelled, see No. 366, of 1903. Cochán may be issued."

Griffith Williams J.: What page is that ?

Mr. Clerides : There are no pages, but I pinned two pages where the word "cancelled" appeared and at the same time "cochan may be issued," which doesn't mean that they were cancelled because they were 20 incorrect. But when a new local enquiry is made for those who applied for registration, and a new local enquiry is made, and that local enquiry is kept in the file of the application for obtaining a title deed, then a new enquiry is made, and this is of no use any more. That doesn't mean because it says it is cancelled that it is incorrect. At least, you have two instances where it was acted upon, although cancelled, and it says "title deed to be issued." In my respectful submission, the field book, which is the basis of the Register of Properties in Cyprus, was rightly admitted in this case, to indicate the source of the title deeds of the Respondents and the extent of their rights at the time of the preparation 30 of the field book.

Well, then, so much for the field book itself.

Then all these taken together with Exhibits 13 (A-2), (B-2) and (C-2), are simply copies of Exhibit 2, and I need not say anything about them. Then Exhibits 3 (A), 3 (B) and 3 (C) are entries in the Land Register which are public documents. Entries in the Land Register surely are admissible in evidence as showing the title of the respective owners.

Mr. Houry : We never questioned that.

Mr. Clerides : You never questioned that, I am sorry. Anyhow, of course 3 (A), 3 (B) and 3 (C) are simply copies from the field book again. 40 Then comes Exhibit 4. That was not put in by the Respondents. That exhibit was put in by Appellants. On page 41.

Chief Justice : What is that one ?

Mr. Clerides : A letter of the Registrar-General to Yusuf Zia. Mr. Houry was cross-examining the witness at page 41.

"*XXn by Mr. Houry* : The authority came from the Director of the Land Registry to Salim Eff. ?—A. Yes.

"Q. Have you got that authority?—A. The same instructions were given to Yusuf Zia.

"Court: You want them?—A. For the purpose of deciding the admissibility we can take that your Honour. Put in and marked Exhibit No. 4."

10 Now, of course, that was put in for the purpose of showing whether Exhibits 5 and 6 should be admissible, but my learned friend, once he put it in, and it was put in evidence for the purpose of the admissibility of the following exhibits, laid stress on the contents of the document. Well, of course that document admittedly is not connected with Exhibits 5 and 6. It deals with the registration of the waters of Flasou and Linou and Katidhata. Then it goes on to point out how many villages are entitled to irrigate from the river and then it gives a rough statement of the rights of irrigation of certain villages given by an inhabitant of the village, and then points out that although a village, for instance, Linou, was entitled to 12 hours of water, they made records for registration for 81 hours on a Tuesday, and it explains how it was.

Chief Justice: What is the importance of that exhibit to us now?

20 *Mr. Clerides*: Well, in my submission, it has no importance, but I thought it necessary to reply to the points made out of this by my learned friend.

Chief Justice: Is there any evidence that the Court below was improperly influenced by it, or anything? Need we take up any time on it?

Mr. Clerides: No, because when my learned friend pointed out certain discrepancies, inaccuracies, in the times generally, we said that the Court was misdirected by inadmissible evidence, because . . .

Chief Justice: I do not remember in that judgment any reference to this exhibit, or any conclusions drawn from it. Need we take up much time on this particular matter?

30 *Mr. Clerides*: No. So once I have submitted that it was put in by Plaintiffs, I limit myself to saying that no importance whatever should be given to the contents of the document, it is not connected with the case.

Chief Justice: And there was no reason to suppose the Court below was misled by it.

40 *Mr. Clerides*: No, my Lords. We now come to Exhibits 5 and 6. The evidence with the regard to the admissibility of these documents is at page 42, and in my submission, again these documents, these two documents, were admissible both as being ancient documents, and also under section 4 of Law 14 of 1946. The last documents to which my learned friend objected as to their admissibility, are Exhibits 15 and 16. That these two documents were admissible in consequence of Exhibit 12. They are connected with Exhibit 12, page 90. Exhibit 12 was put in by the Respondents and it is the title deed of the water of a spring.

Griffith Williams J.: Appellants or Respondents?

Mr. Clerides: Sorry, my Lords, Appellants. The relative part of the record is at page 90. Witness 12 of the Defence, Christophis Mirianthopoulos:

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" I am 56 years old. I am of Kakopetria and I continue to live in Kakopetria. I have been a water guard of Kakopetria for 8-10 years. 1939 was the last year I was a water guard. I am an Aza of the village. Exhibit No. 12 is the title deed in the name of the village commission of Kakopetria."

He then produced it. Now, this witness was cross-examined at page 92 :

" I am sure that the river of Ayios Nicolas is not called Karkotis river, and the place of the river where the spring we bought is is not called Karkotis river."

Then counsel for Plaintiffs reads to witness from Exhibit 12 :

10

" Boundaries : Coming to the surface from the spring having its source in the field belonging to the heirs of Panayiotou Hj Kyriakou and bounded by : Karkoti River ; Succon. of Haralambos Kyriakou : Gavrielis Kyriakou : Succon. of Hj Savva Hj Michael : Road and Monopadi :—Property : Running water, the whole supply one wheel-well's spring water."

Then Defendants-Appellants put in Exhibit 14 at page 98, and again at the top of the page they produced a certificate of search from the L.R.O. showing this property this spring water :

" Q. Now, this is a certificate of search made by your office 20 (Exh. 14). Will you please say if it is correct ?—A. It is correct. You may ask the L.R.O. clerk who prepared it.

" Q. You see that the newest substituting registration is for a spring. Will you please read it ?—A. ' Running water, the whole supply being one wheel-well's spring water—coming to the surface from the spring having its source in the field belonging to the heirs of Panayiotou Hj Kyriakou, bounded by : Karkoti river, and so on.'"

Now, when they put it in, once that search was put in, I started cross examining. I put questions on Exhibit 12 :—

" *XXn. by Mr. Clerides* : Q. Will you look at Exhibit No. 12. 30 Was this title deed made after local enquiry or not ? Can you say ?—A. I think it was issued after local enquiry, but I must look it up.

" Q. Will you find the file and produce it to the Court ?"

And then at page 100 at the bottom of the page :

" *Court* : P.D.C. Will you please compare Exhibit 12 with Exhibit 14 in which registration 511 is described to be Field. Also the water under registration No. 2922 is shown coming out from a spring having its source in the Field and not from Karkotis river as given in Exhibit 12 by way of reference ?—A. Yes, as it is 40 shown.

" Q. And which of the registrations is the earliest ?—A. No. 511 is the earlier registration.

" *Mr. Clerides* : Which is the date of registration No. 2922 ? —A. 12th November, 1925.

" Q. And Exhibit 12 was issued after local enquiry ?—A. Yes, this was produced after local enquiry.

" Q. Then Exhibit 12 was issued after local enquiry and at that local enquiry the Mukhtars and the Azas of Kakopetria village gave a certificate?—A. Yes.

" Q. And this registration was made on the basis of that certificate of the local authorities of Kakopetria upon which this registration was effected?—A. Yes." (Exhibit 15—certificate of the Mukhtar of the village.)

" Mr. Houry : Can I see this certificate, your Lordships, because I haven't seen it.

10 " Court : (P.D.C.) Yes, of course.

" Mr. Houry (after consideration) : There is no objection to this, your Honours."

Now, that certificate, while I am on this point, your Lordships will see the certificate at page 12 of the Exhibits, and I should draw your Lordships' attention to one word in it, at page 13 (p. 291). This certificate by the Mukhtar and Azas at paragraph 4 of the certificate, is as follows :—

20 " The running water in question having its source, as stated above, in the field described in B.3/171 and Regn. No. 511 belonging to the said Panayiotou Hj Kyriaco goes from east to west and then runs to the river Karkoti as shown on sketch drawn at the back of Form N. 67."

They say that that water of the spring which is above Kakopetria above the junction runs into the river Karkotis, not into Ayios Nicolaos, it runs into the river Karkotis not into Ayios Nicolaos, and that is certified by the mukhtar and azas.

Mr. Houry : The sketch is not in evidence.

30 Mr. Clerides : It says it runs into the river Karkotis. If the mukhtar and azas of the village did not know that the river which was called Ayios Nicolaos was not called Karkotis, no it doesn't run into the river Karkotis, but into the river Ayios Nicolaos. Then in order to have the registration effected, in the name of the committee, the irrigation committee or the village commission, I do not remember what, the consent of the owner was required, a certified consent was required, and I asked at page 100 :

" Mr. Clerides : There is also a consent of the owners of the property which is verified by the mukhtar and the aza of the village. (Exhibit 16.)

" Mr. Houry : I object because I haven't seen any consent. After reading consent, Mr. Houry objects."

40 It was admitted before objection and it is admissible because it shows how Exhibit 12 was issued. It is connected with Exhibit 12, without this consent, Exhibit 12 could not be issued, and then the certificate of the mukhtar and azas of the village which they gave, and certified the consent is admissible, and then, my Lords, it is material to note the contents of that exhibit. They certify first of all the persons :

" We the undersigned heirs of the deceased Panayiotou Hji Kyriakou of Kakopetria declare that we have no objection to the issue of a title deed in the name of the village Committee of

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Kakopetria in respect of the running water at locality Vateri, Kakopetria (about one wheel-well) which come to the surface of our field (heirs of Panayiotou Hji Kyriakou) and bounded by river Karkotis heirs of Haralambos Kyriakou, Gavriel Kyriakou, heirs of Hadji Savva Hadji Michael, road and footpath."

It is a certificate given by the mukhtar and azas indicating that the river at that place is called Karkotis river.

Chief Justice : That is a different point. You were dealing first with the admissibility of the evidence which had been objected to by the defence. Have you completed that? 10

Mr. Clerides : Yes, I have completed all my points on admissibility.

Chief Justice : A convenient place to stop. You will have to return later to that other evidence in connection with the name of a river above Kakopetria. We shall sit at the same time as yesterday, 4 o'clock.

Mr. Clerides : As your Lordship pleases.

Chief Justice : Can you tell us anything about the map?

Mr. Indianos : I have seen Mr. Harrop, who is the Assistant Director of the Land Registry and Surveys, I explained to him the object of my visit, he called in the Assistant Surveyor who is acting for the Surveyor, who is now ill in hospital, I understand, and I told him that your Lordships 20 would like to have a map showing the physical condition of the ground above Kakopetria showing the rivers Karvounas and the Ayios Nicolaos and four dams of Frantziko, Ayios Nicolaos, Karidhi and Kapadhokas, also the private springs which belong to Kakopetria people above the bridge.

Chief Justice : And where these two arms, Karvounas and Ayios Nicolaos, go. I do not know whether they go a long distance or not.

Mr. Indianos : He stated "we have got maps already, we could mark on those maps the dams you want, and the number of springs are shown on those maps, and if there are any other springs, I can consult 30 the people interested to have their springs noted and put down on those maps. Unless you want one of my men to visit the place."

Mr. Clerides : I think it would be safer for an officer of the L.R.O. to visit the place with the plan, and mark and verify everything, and say that he saw the place.

Chief Justice : Quite. We were saying this morning we want someone who can come and say: on my own knowledge and information, they are as they are recorded in this map, and I have marked such and such a dam here and somewhere else, and tell us where these two arms Karvounas and Ayios Nicolaos go to. 40

Mr. Clerides : Yes.

Chief Justice : Or rather, come from.

Mr. Clerides : He may show them right up to the beginning and show all these, Ayios Nicolaos and Karvounas. They have their tributaries again.

Chief Justice : That is what we are afraid of. We do not want to go too far.

Mr. Clerides : And that may be done next week.

Mr. Indianos : They want an application.

Chief Justice : They want an application from you ?

Mr. Indianos : They said a form, if a form is filled in and approved by the Court, then we shall carry it out. There is some kind of form which has to be filled in.

Chief Justice : If he wants a form, the Registrar will give him a form.

10 *The Court rose at 1.10 and adjourned to 4 p.m. on the same afternoon.*

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Appearances as before.

Court resumes hearing.

Chief Justice : A word about this map before you begin. We want to see where these two arms start from.

Mr. Clerides : Yes, my Lord.

Chief Justice : If they have tributaries they can be just indicated, we do not want every tributary traced to its source, but we want to see where the arms start from, these two arms that are called Ayios Nicolaos and
20 Karvounas. We want to go up to what can be called the source of these tributaries, if they can just be indicated shortly.

Mr. Clerides : Yes, of course there are plans already, the survey plans show everything, but all we want is to have a man to go to the spot and come and say of his own knowledge that this map is accurate.

Chief Justice : Yes, but we have not got as part of the record now a survey map which shows everything.

Mr. Clerides : No, it shows only to a certain extent the branch of Ayios Nicolaos and the tributaries before Ayios Nicolaos.

Chief Justice : But it does not show the other one ?

30 *Mr. Clerides* : No.

Chief Justice : Karvounas ?

Mr. Clerides : No.

Chief Justice : And anyhow nobody has marked it on the map.

Mr. Clerides : It is marked on the map which is already in Court.

Chief Justice : Anyhow, this is what we want in a single map which can form part of the record of this case and which can be explained by someone who comes here as a witness and says : I have been there and this is how it goes as shown here, and such and such a dam is in such and such a place marked, and that sort of thing.

40 *Mr. Indianos* : Distances ?

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Mr. Clerides : Distances are not necessary.

Chief Justice : Well, if we can have them.

Mr. Clerides : The witness will be able to give the distances from the survey plan.

Chief Justice : Very well.

Griffith Williams J. : It will be to scale ?

Mr. Clerides : Yes.

Griffith Williams J. : What scale, how many inches to a mile ?

Mr. Clerides : 3 to 500.

Griffith Williams J. : What does that mean, 3/500 ?

10

Mr. Clerides : One inch to 500 feet.

Chief Justice : Anyway, whoever comes here can tell us what that is and what the distances judged by that scale are.

Mr. Clerides : Yes, my Lord.

Chief Justice : Because I want to mention something which you will no doubt talk about later on. We want these two arms shown separately because two of the dams from which you claim to be able to get water at certain times are in the one arm and two of them are in the other.

Mr. Clerides : Yes, my Lord.

Chief Justice : One arm, the Ayios Nicolaos arm, may possibly be called also Karkotis river, but from what I can understand of the judgment up to now the Karvounas is not.

Mr. Clerides : Yes.

Chief Justice : So that your right to control the dams in the Karvounas must depend on something else than the fact that it is part of the Karkotis river.

Mr. Clerides : Yes.

Chief Justice : It may depend on *ab antiquo* rights, no doubt you will base it upon that. But the rights in respect of the two dams, although they may both be based on *ab antiquo* rights, have a difference in that two of them may possibly be properly said to be in the Karkotis river and two of them cannot be, as I understand it at present.

30

Mr. Clerides : Yes, my Lord, I quite agree.

Chief Justice : There is also the question, besides the question of *ab antiquo* rights, the question which appeared to be suggested by some of the authorities that you quoted this morning, whether a person who has a right to water in a certain river has the right to prevent people from stopping the water from getting to that river before it gets there.

Mr. Clerides : Yes, my Lord.

Chief Justice : That also arises, doesn't it ?

40

Mr. Clerides : Yes.

Chief Justice : And you will no doubt deal with these two things. I think it is clear now what we want in the map. We want to trace these two arms as far up as they go.

Mr. Clerides : Yes, my Lord.

Chief Justice : Now, you had been dealing this morning with the argument of the Appellants on the admissibility of certain evidence and I understand you had completed that part of your argument ?

Mr. Clerides : Yes, my Lord. Now I propose to deal with the comments of my learned friend on the evidence of the Plaintiff and the
10 words he pointed out as being contradictions of one witness with another.

The first point raised by my learned friend is that there is nothing in the evidence of the Plaintiffs about the rising of the Pleiads or the rising of Orion to indicate at what place they should be visible. The witnesses were not asked, but it may be clearly inferred that the visibility of these stars should be considered at the point the water at the time is to be taken. If at the rising of the Pleiades the water is to be taken at Frantziko the stars should be seen at Frantziko dam and not at Petra.

Chief Justice : That is the same, I suppose, for the length of the shadow.

20 *Mr. Clerides* : For the length of the shadow there is definite evidence, they say at the spot, at the sluice, the witnesses made it clear, but the other, I think it may be clearly inferred . . .

Griffith Williams J. : It was the length of the shadow at the sluice ?

Mr. Clerides : Yes, the length of the shadow.

Chief Justice : That is the same principle ?

Mr. Clerides : Yes, the same principle. Now, my learned friend referred to page 17 where one witness said that about the water of Linou. It is some 20 lines from the bottom of the page : " When we say Tuesday night we mean Monday night towards the sunrise of Tuesday morning
30 and on this night Tembria village is entitled one-sixth of the water in the river, the remaining water being taken at Linou village." The other witness, at page 21, says : " On Tuesday day time Linou and Katydhata are entitled to the water." And the complaint of my learned friend is that the one said Linou and the other Linou and Katydhata.

Mr. Houry : I said Tembria, and the other Linou and Katydhata.

Mr. Clerides : Yes, Linou and Katydhata, it will be explained, Linou and Katydhata are sharing the water. The one witness said Linou, the other Linou and Katydhata. The first witness was not cross-examined about it, but the fact is that Linou and Katydhata on Tuesdays share
40 the water, and that appears from Exhibit 5 at page 9 (p. 269).

Chief Justice : I think what we shall be most interested in is not so much in little contradictions between different witnesses but in the question whether there is evidence on the part of the witnesses to establish your claim.

Mr. Clerides : Very well, my Lords, so I may dispense with all these alleged discrepancies, which really are not discrepancies, but they can be explained if the evidence is looked at as a whole.

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Chief Justice : It is the positive evidence in respect of your claim which is the more important thing. As we all know, you can get contradictions between witnesses almost without limit. Not only in this case but in others.

Mr. Clerides : Yes. In any case, the contradictions submitted by my learned friend do not go to the main issue between Plaintiffs and Defendants. The point which my learned friend made was this, that the witnesses of the Plaintiffs stated clearly that they were taking the water from the sluice of Evrychou, Korakou, Tembria, and one or two other places, when their turn came.

10

Griffith Williams J. : The sluices right down the river, at the bottom ?

Mr. Clerides : Yes, and they never said that they were taking the water from Frantziko dam or from Appliki or from Karidhi. But the witnesses said that they were watching the water at Frantziko, Karidhi and Appliki to see that it will go to the river so as to reach the sluices from which they were conducting the water to their properties.

Chief Justice : In fact they did not take water from these dams directly ?

Mr. Clerides : No, they cannot. The water from Frantziko and the other two dams will fall again into the river, follow the bed of the river until it reaches the channels of Korakou, Evrychou and Tembria where there are sluices out of which they take the water to their property.

20

Griffith Williams J. : Petra must be a long way from Evrychou, isn't it ?

Mr. Clerides : Yes, it is.

Griffith Williams J. : And they are taking it from the dam at Evrychou ?

Mr. Clerides : From the channel of Evrychou. At a certain spot in the channel of Evrychou there is a cut.

Griffith Williams J. : And it goes into the other river there, does it ?

30

Mr. Clerides : Yes. Now, the next point my learned friend argued is about the denotation of the river Karkotis, and he referred to the Statement of Claim, paragraphs 1, 3 and 12. Paragraph 1 of the Statement of Claim reads as follows : "The Plaintiffs mentioned in the Writ of Summons and in the attached thereto list, are all inhabitants of the village Petra and owners of fields irrigable from the waters of the rivers 'Karvouna' 'Ayios Nicolaos' and 'Karkotis'." Then 3. "The waters of the rivers 'Karvounas' 'Ayios Nicolaos' are joined near the village Kakopetria and form the river Karkotis the water of which passes through several dams the principal ones being the dams 'Ayios Nicolaos' 'Frantziko' and 'Karidia' all situate at or in the vicinity of the village Kakopetria."

40

Now, in paragraph 3 the Statement of Claim says that the two rivers, Karvounas and Ayios Nicolaos are joined near the village of Kakopetria and form the river Karkotis, the water of which Karkotis river passes through the dams Ayios Nicolaos, Frantziko and Karidi, and which dams are situated above the junction. It does not state that the rivers form

the Karkotis river after the junction, but the waters of these rivers are joined and form the river Karkotis, the water of which passes through several dams, Ayios Nicolaos and Frantziko, which are above. The meaning of it, my Lords, is this, that what the Plaintiffs mean to say is that although locally these two branches have a different name the water of these rivers is the water of the river Karkotis.

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Chief Justice : Both branches ?

Mr. Clerides : Well not that both are called river Karkotis, but both of them are forming the stream of the water, which stream is considered as Karkotis river, and that water, that stream, passes through these dams two of which are on the one branch and two on the other branch. So, in my submission, it cannot be fairly contended that by this Statement of Claim the Plaintiffs admitted that the water they were claiming is the water below the junction, or that they have agreed or have admitted that only the part of the river which is below the junction is Karkotis river. It is made clear when the Plaintiffs say that the water of these two rivers which constitute the river Karkotis, that water of Karkotis passes through the dams which are above the junction. And the meaning to be given is this, that they do not admit that Karkotis is only from the junction downwards, but the water, the whole water, belongs to Karkotis, and that water passes through the dams which are above the junction. And the meaning to be given is this, that they do not admit that Karkotis is only from the junction downwards, but the water, the whole water, belongs to Karkotis, and that water passes through the dams which are above the junction.

Chief Justice : The expression is not entirely clear.

Mr. Clerides : No, it is not, but it appears that it was not the intention to limit their rights from the junction downwards.

Chief Justice : That is obvious, but because if that were so they would not talk about the dams which were up above.

Mr. Clerides : Yes, but they say they are those two rivers, on account of their locality they are called the one Karvounas, because it comes from Karvounas, and the other Ayios Nicolaos because it passes by Ayios Nicolaos, but the water they bring is the river Karkotis. The one branch, the Ayios Nicolaos branch, is the main one and the other is a tributary.

Chief Justice : Is that in evidence ?

Mr. Clerides : I think there is evidence, I tried to find it a short while ago, but I could not get it, but I remember seeing it.

Griffith Williams J. : It is more or less what the judgment says, I think the judgment practically says that.

Mr. Clerides : Yes, the judgment practically says that, but I remember seeing in the evidence that the stream of Ayios Nicolaos is a much bigger stream than the other one. So much so that the evidence of the Defendants was that at one time they were conducting the Ayios Nicolaos through Frantziko and then throwing it into Karvounas river and then taking it by the channel of Appliki in order to irrigate.

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I propose now to say what is the effect of the evidence of the one side as a whole and the effect of the evidence of the other side as a whole. The Plaintiffs' evidence as a whole is that Defendants are entitled to irrigate their lands only on Sundays, Mondays, Wednesdays, Fridays and Saturdays from the rising of the Pleiades between June and up to August, up to the 15th August old style, that is the 28th August new style, and from that date onwards from the rising of Orion.

Griffith Williams J. : They consider that when it gets to the belt, isn't it ?

Mr. Clerides : Yes, that is so, and they will continue irrigating every 10 day up to the rising of the sun, except on Friday, when they are entitled to irrigate after sunrise, irrigating until the shadow of a man at the spot they take the water is 7 feet.

Griffith Williams J. : All depending on the dam, doesn't it ?

Mr. Clerides : Yes, my Lord.

Griffith Williams J. : A man is 7 feet or 6 feet or 5 feet, as the case may be, depending on the dam ?

Mr. Clerides : Yes, from Kakopetria it is 7 feet from the place they take the water on Friday.

Griffith Williams J. : In all the dams ?

20

Mr. Clerides : In all the dams Plaintiffs are taking water. And the people of Galata and Sina Oros are entitled to take water from the river at the same time. The Defendants, as to their rights, say : No, we have no limitation whatever. We have the unrestricted right to take water from the river and irrigate any time we like and as much as our land requires. Now the Plaintiffs, with regard to their own rights, they say that : We are entitled to Saturday afternoon, Sunday afternoon, Tuesday afternoon, and Wednesday afternoon to take the whole water of the river from the sluice of Evrychou, Korakou and Tembria, when the shadow of a man is 7 feet, from two upper sluices, one when the shadow of a man is 6 feet and from the other when the shadow of a man is 5 feet.

Chief Justice : Where do you get that ? In their claim ?

Mr. Clerides : In their claim.

Chief Justice : They claim the afternoons of Saturday, Sunday, Tuesday and Wednesday, as you say ?

Mr. Clerides (reading from paragraph 4 of the Statement of Claim) : " From the time when the length of the shadow of a standing man at the dam and/or locality ' Sanidhi-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 ' Dembria ' 6 feet, and/or at the dam and/or 40 locality ' Sanidi Korakous ' at Korakou 7 feet."

Chief Justice : Four places ?

Mr. Clerides : Yes, my Lord.

Griffith Williams J. : Tembria was 6 feet too ?

Mr. Clerides : At locality Vraktos at Tembria locality, Paliomilos.

Chief Justice : Is Dembria different from Tembria ?

Mr. Clerides : No, my Lord.

Chief Justice : Is that a misprint ?

Mr. Clerides : It must be a misprint. At Paliomilos 5 feet and at Vraktos 6 feet. The Defendants pretend to know nothing about the rights of the Plaintiffs to irrigate. Plaintiffs go further and say what the rights of the other villages are to irrigate. Defendants deny anything about the rights of the other villages, and although with regard to Galata and Sina Oros the two dams, that is Kapadokas and Vassiliko are within
10 the village of Kakopetria, they do not know when these dams which are in their village and in the river above the junction take water. Only three witnesses of the defence, who happen to have properties at Galata, agree and state that those two dams and the other four dams from which Galata irrigates are taking the water every day at the rising of the Pleiades except Tuesday, at the same time as the Plaintiffs allege that the Defendants are taking their water. At page 59 of the notes witness for the defence Alexandros Savva says :

20 “ Galata people irrigate with their turn. Galata people are allowed to irrigate at the rising of the Pleiades and from the 28th August from the rising of the Orion. I was a member of the Irrigation Division of Galata for two periods and I know it. From June up to the 28th August Galata people are entitled to irrigate from the rising of the Pleiades and from the 28th August from the rising of the Orion.

30 “ *Q.* You told us as to the time they start to irrigate, but up to what time they are entitled to irrigate ?—*A.* Up to sunrise. When the sun rises the following villages take the water : Evrykhou, Tembria, Korakou. I said that Galata people take the water from the rising of the Pleiades or Orion. Not on all days they are taking the water. On Tuesday Galata people are not entitled at all to irrigate.

“ *Q.* I put it to you that during the hours Galata people irrigate also the Kakopetria people are entitled to irrigate ?—*A.* No, it is not so.”

Another witness is at page 86 :

40 “ We Galata people take water according to certain signs on the sky. We take water as from the rise of Pleiades up to sunrise and until the 28th of August and from the 28th of August onwards from the rise of Orion up to sunrise. I do not remember if our village and Sina Oros had any dispute at Kakopetria regarding water.”

He does not remember a case which was between Galata and Kakopetria.

Then at page 76 there is another witness :

“ We, the Galata people irrigate from the dam of Vassiliko and Kapadhokas. Kakopetria people have also properties which are irrigated from these two dams. From these two dams Galata and Sina Oros are not entitled to irrigate any time they like, but we have got certain signs. We have got the right to conduct the water into the channel from the rising of the Pleiades till sunrise and this up to the 28th August or 15th August old style calendar.

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After the 28th August we are entitled to take the water from the Orion till sunrise. During the other hours except these the water flows in order to go to the other villages to irrigate. I do not know if during the same hours we are entitled to take the water from these dams, Kakopetria people have got the same rights for the channels above us."

Griffith Williams J. : That does not look to me quite right.

Chief Justice : He says : " I do not know."

Mr. Clerides : " I do not know if during the same hours we are entitled to take the water from these dams, Kakopetria people have got 10 the same rights."

Griffith Williams J. : Further down he speaks of that case.

Mr. Clerides : It is further up that he speaks about the case, my Lord.

Chief Justice : He also does lower down.

Griffith Williams J. : That case, the one at the top, was another case, it was in February, 1946. There is another case down below : " I know that Galata and Sina Oros people brought an action against Kakopetria people for the water. It is an old case." He says he does not remember anything about it.

Mr. Clerides : Yes, about the 1914 case, it was in consequence of 20 this case. The present case. When this case came on for trial the Defendants made an application to stop the case and to be given time to bring a case against all the other villages and they brought that action. Four months was given them to bring that action in 1946, pleadings were closed, and when this case came on for trial and decided they agreed to withdraw the case subject to the right to reinstitute it or to bring a new action if they succeeded in this case. That is the case referred to above, the 1946 case.

Now another witness, at page 74, middle of the page : " I remember Haji Papa Symeo Nicola." That was the Defendant in the old action 30 of 1897. " He was one of the Defendants sued as representative of the village. We do not know that the claim of Sina Oros and Galata against Kakopetria was that Kakopetria interfered with the rights of the inhabitants of Galata or whether we cut the water at Frantziko or that we were using more than we were entitled to. People of that period were mistaken when saying that the Frantziko dam was in the Karkotis river." So the whole evidence of the Plaintiff speaks in detail and consistently of the rights of Plaintiffs and Defendants to irrigate from that river and the rights of the other villages, while the Defendants know only one thing all through, except the two or three witnesses which I 40 have mentioned, that they are not interested about any signs in the sky or any other signs, and the only thing that they are interested in is to have an unrestricted right to take water whenever they like, independently of the rights of other villages.

Now, in view of this evidence, for which Plaintiffs called 14 witnesses, out of whom only 12 witnesses were witnesses as to the rights of the parties, and Defendants called 13 witnesses, out of whom 12 witnesses were as

to the rights of the parties, one witness was only with regard to a spring which is below the junction.

Mr. Houry : Eleven witnesses were called.

Mr. Clerides : I think 14. Anyhow, the one side saying the one thing and the other side saying the contrary, it was really very difficult for the Court to decide. But the Court, on the whole, as they said at page 121, although they felt some difficulty in view of the one side entirely contradicting the other, they say : " 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 points, 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."

So, that is the view of the Court as to the witnesses of the one side and of the other side, but then the Court goes on to consider corroborative evidence. They say : well, it would have been difficult for them to decide who are telling the truth, and then they say, well, there is corroborative evidence which corroborates what the Plaintiffs state.

Now two points arise, my Lords. One is, was any part of the river above the junction called Karkotis, and the second, what were the rights of the parties, the irrigation rights of the parties.

On the first point, besides the oral evidence, the contention of the Plaintiffs is corroborated by the documentary evidence adduced by the Defendants themselves. They produced a title deed, Exhibit 12, for a spring of water which they bought for the village, and which they conducted to the village by pipes, and the boundaries of the field in which the spring was is set out in their title deed, and the river through the boundary of that field which is admittedly above the junction, is called Karkotis river. They themselves produced Exhibit 14, which gives the same boundary. And then Exhibits 15 and 16 were produced, the certificates upon which the title deed Exhibit 12 was issued, certified by the mukhtars and azas of Kakopetria, stating that the water of that spring falls into Karkotis river, and giving the boundaries of the field as Karkotis river. So, independently of any evidence to the admissibility of which Defendants object, that point, that the river above the junction was called Karkotis river, has been established beyond any doubt.

With regard to the rights on water. Again, we have admissible documentary evidence and that evidence is Exhibit 8, being 12 title deeds, 12 title deeds of Plaintiffs in which their water is described as running

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through Karkotis, river of Troodos. One of them, Exhibit 8 (3), describes the water as running through from Karli Dagh, Karkotis river, Karli Dagh is "Chionistra," it is the Turkish word for Troodos. The white mountain. Exhibits 8 to 10 describe water running through Karkotis river having its source from the spring of Troodos. Two or three title deeds which are later in date say "running through Karkotis river," and then each of these title deeds speak about division, from what division. One of them says Mussulman Division, the Moslem division, the other speaks about Greek division, the other about another division.

Chief Justice : That division, I think we were told yesterday, means 10 "turn," so that it applies rather to time than to locality.

Mr. Clerides : Yes, my Lords, I mean it is not a locality.

Chief Justice : I was misled, because I thought it applied to locality, but it appears that it applies to time.

Mr. Clerides : No, it does not, my Lords, and although in Exhibit 5 at page 3 (p. 263), when speaking about these divisions, these turns, Salim Effendi, who made this report, says : "There are six divisions of 12½ hours each in every 22 days, one of 23 hours, and one of 28½ hours in every 15 days and two of 2½ hours each in every 22 days."

Chief Justice : Are you reading from the report ?

20

Mr. Clerides : Yes, at page 3 (p. 263), para. "c." So there are in all in Petra itself 10 divisions of water, ten turns of water. That explains entirely the description of division, the description in the term appearing in the title deed Exhibit 8.

This is again a piece of evidence which corroborates the oral evidence of the Plaintiffs as to the extent of their rights, as to what river.

Chief Justice : How important is it to you to establish that one of these tributaries, so to call them, of the river above the junction, has the same name as the river ? Because the rights which you want to establish to the control of two dams at certain times in the other arm 30 is not based on that.

Mr. Clerides : It is not based on the name itself, my Lords, but it is based on this : There is a river called Karkotis, and there is evidence that Karkotis is called, as a river which starts from Troodos and even above the junction, it is called Karkotis. Then there is another tributary, Karvounas, the water of which falls into this river, and that Karvounas again comes from Troodos, it is one of the sources of Karkotis river, and therefore the water of Karvounas is the water of Karkotis.

Chief Justice : So, would not your position be just the same even if the Ayios Nicolaos arm was not called Karkotis ?

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Mr. Clerides : Well, it would have been the same, but it strengthens my position because they say that Karkotis is from the junction downwards, I say no, there is documentary evidence and oral evidence that even above the junction and right up to above Ayios Nicolaos it is called Karkotis.

Chief Justice : But actually your position would be just the same even if it were not.

Mr. Clerides : That may be so, my Lords, but it makes it stronger.

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Chief Justice : The reason why I ask is because I think somewhere in the judgment they refer to the projection of a name—so to call it—above the junction, as being of paramount importance, don't they? On page 121 : "The significance in finding the extent of this river lies in the fact that Plaintiffs' rights of water according to their title deeds and other documents relate to Karkotis or Kariotis river coming from Troodos or of Troodos, and it is of paramount importance to find from what point this river starts and flows inasmuch as Frantziko and other dams above Kakopetria village which have been admittedly interfered with by Kakopetria people lie in the rivers running above Kakopetria." Does that mean that he found that Karvounas was also Karkotis?

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Mr. Clerides : No, they did not find that.

Chief Justice : No. Isn't there possibly some slight confusion there? You do not propose to establish that Karvounas is Karkotis, and yet you propose to establish your rights to prevent interference with the flowing of water down Karvounas into Karkotis. Does it matter whether Ayios Nicolaos is Karkotis or whether it is not, is it right to say that it is of paramount importance?

20 *Mr. Clerides* : Well, it may be that it is not, but there it is, there is evidence of the Defendants that it is only from the junction downwards that it is called Karkotis, there is evidence to show that even above the junction that part is called Karkotis, that other is only a tributary which brings the water into Karkotis, and the water it brings is Karkotis water.

Chief Justice : Yes, that I understand. You do not say that your position is any weaker in regard to one arm, so to call it, than the other arm, yet one arm is not Karkotis at all, so it seems to me a little doubtful what the Court could have meant that it was of paramount importance to establish that one arm was called Karkotis.

30 *Mr. Clerides* : It may be in view of the insistence of the Defendants that the rights of Karkotis were . . .

Chief Justice : In spite of that, they found no difficulty in finding that the rights extended to Karvounas also and not only Karkotis. That is of some interest, that distinction which I was trying to draw is of some interest, because it raises the question whether if you have the right to take water from a certain river you must have the right to prevent people from stopping water from reaching that river by the channels which it normally does reach it by. That is a proposition which might be right or might be not.

40 *Mr. Clerides* : I submit that it is right.

Chief Justice : You submit that it is. Yes. You have your authorities of course, for that, which you quoted to us at the beginning?

Mr. Clerides : Yes.

Chief Justice : At the same time I would just like you to clarify the position a little bit, by basing your right, if you so base it on that proposition. You have the right to take water from a certain river Karkotis,

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that must mean, if that right is to be worth anything to you at all, that you have the right to stop people from preventing the water which ordinarily does flow into that river from doing so.

Mr. Clerides : Yes, my Lord. Well, the position, I submit, is very clear. I am entitled to irrigate from the river Karkotis which has its source at Troodos. Well, of course, it is not one stream beginning at Troodos and coming down. There are several streams which unite. I am entitled to this water. No one who has no right or in excess of his right can come and at the time of my turn can interrupt that water in any branch of the river, in any branch any part of the water which forms the river Karkotis. That is my submission on this point. 10

Chief Justice : Quite. That makes no distinction between the two arms, Ayios Nicolaos and Karvounas, and according to that proposition it does not matter in the least to you whether Ayios Nicolaos is called Karkotis or not ?

Mr. Clerides : Yes. With regard to the rights of irrigation of the parties, I have already stated that the Court believed the witnesses of the Plaintiffs, and I submit that in that they were fully justified, and the reason they give that the evidence is more natural and truthful is correct. Because it is inconceivable that one village should be entitled at any time, unrestrictedly, to take water, while there are ten other villages existing at a distance of 10 to 12 miles with rights to irrigate. In one village they say the maximum land they have to irrigate is about 300 donums in their village, but from Kakopetria down to Petra and Elia there are 12 miles extent of irrigable land and it is not natural that those who are owning only 300 donums should unrestrictedly get the water any time they like and thus interfere with the irrigation of the others. 20

Chief Justice : They say they have got so little irrigable land they could not possibly interfere with you.

Mr. Clerides : Well, they say, but the position is this : Assuming that a Petra man 12 miles away starts irrigating, then a Kakopetria man says : Well, I will irrigate now. And he takes the water for two or three hours. The irrigation of the Petra man will be interrupted and if he has to start again it will take three or four hours again for the water from Kakopetria to reach Petra and for him to start irrigation once more. 30

Griffith Williams J. : I do not think that we have got any evidence of that.

Mr. Clerides : No, we have not.

Griffith Williams J. : But they do not take the whole of the water for that time, they only take a small proportion of it whatever they are irrigating—the Kakopetria people. 40

Mr. Clerides : They take a quantity of water, and the quantity left in the river is small, it cannot easily reach a distance of 12 miles.

Griffith Williams J. : Yes, but how much can these channels take out of the river, they can only take one-sixth of the water at the time out of the river.

Mr. Clerides : They say that it takes a sixth, but well, anyhow, it is a fact that when they take the water at Frantziko dam, and the whole

time they cannot take the whole water, it may be too much for them and some of the water, as the dam is not made with stones and earth and it is only cut with stones and branches, a part of the water passes through the dam and comes down. It is a fact, but if they take a quantity of water the water that will remain in the river will not be enough to go a long distance and be used for irrigation.

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10 *Chief Justice* : It seems to me that it is possible to say this : You have got this river Karkotis which is formed below a junction of two arms, say Karkotis begins there and does not go any higher at all, assume that, and your rights are limited to irrigation from the Karkotis river below that junction, what would these rights be worth if you had no control whatever over the interference with water which flows down these two arms into that river ?

Mr. Clerides : My rights will be insignificant—well, if they take the water at certain hours that they allege they are entitled.

Chief Justice : That is an argument of there being some limit, at any rate, on the right of people above the junction to water which would ordinarily flow into the Karkotis river.

20 *Mr. Clerides* : Yes, there must be a limit, it cannot be unlimited, I mean ten other villages have the right to irrigate their properties from the water of this river. It is admitted. If they are entitled without limit to interfere with the water at any moment then the rights of all the other villages are prejudicially affected.

Chief Justice : I am still wondering, need we struggle so much to say that some part of the arm of the river above the junction is Karkotis ? Is it so much of paramount importance ?

Mr. Clerides : Of course the evidence is there, there is this documentary evidence which is binding.

30 *Chief Justice* : It is much simpler if that need not be made one of the foundations of the Plaintiffs' case. An immense amount of time has been spent—I am not accusing you of taking too much time, you have got to answer—but an immense amount of time has been taken both in the Court below and in this Court in supporting that something above the junction was also called Karkotis, and does it really matter ?

Griffith Williams J. : It is certain that the Kakopetria people did acknowledge certain limitations, certain rights, in respect of the people of Galata ?

Mr. Clerides : Yes.

40 *Griffith Williams J.* : So they do, in fact, to that extent, contradict themselves ?

Mr. Clerides : Yes, the Kakopetria people say that they have unlimited rights, but all their witnesses say, or rather three of their witnesses admitted that Galata have certain limitations. Galata have, but they say that Kakopetria have no limitations although at another time it was agreed, at least it appears from the case I cited, that their hours are the same and their rights are the same.

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Mr. Houry : The case my learned friend refers to is a case the file of which he tried to put in in the Court below and it was rejected. I requested him not to mention that case because it was not admitted in evidence.

Chief Justice : The case is there and he is entitled to make all he can of the report.

Mr. Houry : He is by all means entitled to comment on the report, but not on the facts.

Mr. Clerides : I do not propose to deal with the evidence, the documentary evidence in Exhibits 1 (A), (B) and (C), and in the field book, 10 Exhibit 2, and the other exhibits concerning the registrations, because all the effect of that evidence is to prove that Karkotis river was existing beyond the junction. But with regard to Exhibit 5 and Exhibit 6, I should like to say a few words in general. These exhibits were prepared by a surveyor whose duty it was to make investigation. He was detailed by his superior officer, by the Registrar-General, to make this investigation, and make this report and he did it in the course of his duty. Now, the report itself and the plan he prepared could not possibly be made unless Salim Effendi visited all the spots and had gone through the river in order to note all the dams, and it was not possible for him to get one-sided 20 information in order to state what were the rights of all the villages, of each of the villages which was entitled to irrigate from that river. It was his duty to make enquiries and obtain information from reliable persons, and it seems that his information is very accurate and it fits entirely with the evidence given on behalf of the Plaintiffs in this case, and his reference—I need not go through all his reference, but I will deal with the first dams, Nos. 1, 2, 3, 4, 5, 6, 7, 8 and 9. The first nine dams. The first one is the Frantziko. At page 265 :

“The people of Kakopetria take their water on Saturday, Sunday, Monday, Wednesday and Thursday from the appearance, 30 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.

“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.”

That is exactly what the Plaintiffs stated in their oral evidence.

“No. 2 represents the dam from which the people of Kakopetria 40 take water from Karidi river and convey through the channel called Pera Horio when the time comes to take their water they block up the river with brushwood and stone, the overflow of this dam goes to the channel called Befkari No. 3 and the water overflowing from this dam No. 3 goes down to the river.

“These channels Nos. 2 and 3 take their water exactly the same time as the channel No. 1.”

Which coincides with the oral evidence of the Plaintiffs.

“No. 4 represents the dam of the channel called Aplitch of Ayios Nicolaos which takes the water exactly the same time as the 50 above-mentioned channels.”

As I have already submitted yesterday, Appliki of Ayios Nicolaos does not mean that it is Ayios Nicolaos river, it is the dam of Appliki which belongs to the Ayios Nicolaos Monastery, because Appliki is the locality.

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Griffith Williams J. : There is a channel going to Appliki, it is a channel, not a dam.

Mr. Clerides : Yes, channel, called Appliki of Ayios Nicolaos.

Chief Justice : There must be a dam there too, I suppose ?

Mr. Clerides : Yes.

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10 *Chief Justice* : We shall have it on our map when we get it, because it is above the junction.

Mr. Clerides : Yes, Appliki is a dam, and then from the dam it is called Appliki channel, like Frantziko, it is Frantziko dam and Frantziko channel. That Appliki takes the water to Appliki locality which was the property of the Monastery of Ayios Nicolaos and which was 30 years ago sold to Kakopetria people, it was garden land and they have now built the new Kakopetria on it.

Mr. Houry : There is no evidence on that.

20 *Mr. Clerides* : All right. I am explaining this. It says this Appliki is not in Ayios Nicolaos river, it is in Karidhis river, in Karvounas river, and it calls it Ayios Nicolaos because it belongs to the Monastery of Ayios Nicolaos.

I am raising the point because my learned friend stated that Salim Effendi was wrong, not knowing what he was saying. And then :

" No. 5 represents the dam of the channel called Kapadhoka of Galata village.

" No. 6 represents the dam of the channel called Vassiliko of Galata village.

30 " No. 7 represents the dam of the channel called Ganoz of Galata village.

" No. 8 represents the dam of the channel called Makri of Galata village. These four channels of Galata also take their water at the exact time as the channels under Nos. 1, 2, 3 and 4 take."

So the Galata channels, all these Galata channels including the Kapadhoka and Vassiliko which are above the village take the water at the same time.

" No. 9 represents the dam of the channel called Sina Oros Channel of Sina Oros Village which takes its water at the exact time as the aforesaid channels take."

40 So the three villages, Kakopetria, Galata and Sina Oros, in accordance with this report, are taking their water at the same fixed hours, on the same days of the week.

And then the report further goes on to state the rights of all the other villages including Petra. I do not propose to read the whole report, but by reading it your Lordships will see that the rights of the Plaintiffs, as they have stated in the oral evidence on their behalf, coincide exactly with the statements in this report.

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There are two things which remain for me to touch upon, and the one is the submission of my learned friend that the Plaintiffs had abandoned their rights for the last 30 years before the commencement of the action, while the Court found definitely against them on this point.

Griffith Williams J.: How can they abandon their rights as long as they take the water from that channel?

Mr. Clerides: Their evidence was that they were right up to 1941 watching the dams and seeing that the water at the proper time was going to the river. The Defendants denied that and said that all the time indiscriminately they used the water. And the Court found against them and said they never discontinued that right and in 1941 and in view of the Defendants' prevention of Plaintiffs from taking the water at the proper time they brought this action. 10

Chief Justice: Did they keep guards 12 miles away up at Kakopetria?

Mr. Clerides: Yes, they did, two, and the evidence is that they were using guards; every time they had their turn they had two men up at Kakopetria, one at the one branch and the other at the other branch, watching the water during the hours they were entitled to irrigate. Some of the witnesses of the defence admitted that they saw the guards in the village with their spades, but they say: We did not see where they went, we did not see them at the dams. 20

Now, the other matter is about the springs. The Defendants said that in their private lands they have a number of springs which is their private property, and the water of these springs falls into the river below Frantziko. They further say: "The water that we take for our irrigation is much less than the water of the springs that we allow to fall into the river." There is no definite evidence of that, but I made it clear at the trial that the Plaintiffs are not interested in the springs at all. They are interested only in the water which is found in the bed of the river. If they are not using the water of their springs and they leave it to go to waste and fall into the river it becomes water of the river. They cannot separate it again and say: well, that part of the water of the river is our property. If they like to tap their springs, to make reservoirs and keep their water and use it for irrigation, the whole of it if they like, if they manage not to allow a drop of water from their springs to fall into the river we have no objection, we are interested simply in the water which is found in the bed of the river, and they cannot say: Well, we allow our water to fall into the river so we shall have an unrestricted right to take the water of the river above because we allow our water to fall into the river below. 30 40

I will finish by saying that the Court believed the evidence of the Plaintiffs, even without corroboration, although the Court may have had some difficulty in giving judgment in favour of the Plaintiffs in view of some corroborative evidence which was not documentary evidence, they were fully justified in giving the judgment they gave. But even without the corroborative evidence, I submit that once the Court believed the evidence of the Plaintiffs the judgment should have been given as it was given.

There is one point about the injunction, my Lords, which I should like to make clear. Now the injunction is given as in paragraph 12 (A) 50

of the Statement of Claim : “ an injunction restraining the Defendants, their agents and servants from in any way unlawfully interfering with the water, and/or the Plaintiffs rights to take or irrigate their lands from the water, of or running through the rivers Karvouna, Ayios Nicolaos and Karkotis and/or with the dams ‘ Ayios Nicolaos ’ ‘ Frantziko ’ and/or of any other dam and/or of the bed and channels of the said rivers, every Saturday,” and so on.

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10 The reason that in the Statement of Claim we have included “ of any other dam ” is this, my Lords. In addition to these ancient dams other dams, small ones, have been made in the bed of the river for irrigating one small piece of garden or another piece of garden which had no right of irrigation, and there is evidence as to that. The evidence is at page 13.

The Court rose at 5.45 p.m. for a short break.

6 p.m. Court resumes hearing.

Appearances as before.

Chief Justice : We were going through this injunction.

Mr. Clerides : Yes, my Lord.

Chief Justice : You were going to refer us to some passages, I think ?

Mr. Clerides : Yes, at page 13, my Lords :

20 “ Q. Let us stick to the name of Ayios Nicolas from Kakopetria village to Hionistra. Now at that Ayios Nicolas tributary how many dams are there before reaching the village of Kakopetria ?—
A. There may be 100 dams from the mountain down to the village. They are small dams and people take the water in order to irrigate their small gardens.

“ Q. And they have always existed there ?—A. No, only the main dams were there.

30 “ Q. Tell us the main dams ?—A. In Ayios Nicolas river there are four dams : Ayios Nicolas, Frantziko, Vassiliko and Kapadhokas. Vassiliko dam is Karkotis river. Vassiliko dam is after the confluence of the Karkotis river further up.”

And so on. So that the reason for the injunction including any other dams was that besides the ancient dams from which water was taken by Kakopetria people several other dams were made, small dams, in the bed of the river, taking water to irrigate new small gardens. And once we brought the action we wanted to restrain them from taking water in the hours we are entitled to irrigate, not only from the main dams but also from the new dams which they have erected.

Unless there is anything else, my Lords . . .

40 *Chief Justice :* I was just reading this injunction, and what you said you said in explanation of a reference to “ any other dam ” after the reference to Ayios Nicolaos and Frantziko. There are two other big dams which are not mentioned.

Mr. Clerides : No, they are not mentioned because they belong to Galata people and Galata people take the water, in accordance with the evidence, from the rising of the Pleiades six days a week up to August and then from the rising of Orion.

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Griffith Williams J.: And they are not parties to the action, are they?

Mr. Clerides: They are not parties to the action.

Chief Justice: Is that why you do not mention Appliki and Karidhi? They may come in under any other dam?

Mr. Clerides: The reason, my Lord, is this. At the time the cause of the institution of the action was the interference at Frantziko dam, they interfered with our rights at Frantziko dam and we brought that action, and in that action of course we included the other river, the Karvounas river, but we did not mention the dams thereon. The reason 10 of the action was the interference with our right at Frantziko dam, and of course Ayios Nicolaos is above Frantziko, but as they had not interfered up to the time when we instituted the case with the other dams we claimed the injunction generally for water running through the rivers Karvounas, Ayios Nicolaos and Karkotis and/or the dams of Ayios Nicolaos and Frantziko and any other dam.

Chief Justice: So that the injunction must apply to these two dams in the Karvounas?

Mr. Clerides: And to any other dams.

Chief Justice: Yes, but they must apply to these two in Karvounas 20 although you did not mention them?

Mr. Clerides: Yes, although I did not mention them.

Chief Justice: Now the injunction which is asked for and was got is 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—and then it describes it?

Mr. Clerides: Yes.

Chief Justice: Now these two things are quite different, aren't they? It is a request that the Defendants may be restrained from in any way 30 unlawfully interfering with the water, and/or the Plaintiffs' rights, but is the interference with the water unlawful unless it also interferes with the Plaintiffs' rights?

Mr. Clerides: It is the same thing, my Lord.

Chief Justice: Yes, it is the same thing but it does not make the injunction any easier to understand if you put the same thing in quite different ways, but actually, in order to give you a right—let me see how I can put it in the simplest possible way—in order to give you a right to complain of what the Kakopetria people did, mustn't you show that it interferes in fact with your right to take the water? 40

Mr. Clerides: Yes, my Lord.

Chief Justice: Well, have you shown that?

Mr. Clerides: Yes, I have shown that on certain days they interfere with our right of water, and that is admitted, and they objected to our taking the water and threatening us that it should not go to our village at all. There is evidence as to that.

Chief Justice : Yes, but what you object to is their diverting any water at the times when you have a right to take water from the village.

Mr. Clerides : Yes, my right is to have the water at certain times.

Chief Justice : And the whole of the water.

Mr. Clerides : Yes, the whole of the water because they are entitled to take all the water they need within certain times.

Chief Justice : Yes, but Kakopetria and Galata and Sina Oros all take at the same time. Does nobody take at the same time as you ?

Mr. Clerides : No, at the same time as I take it they do not take.

10 *Chief Justice* : Nobody ?

Mr. Clerides : Nobody takes. Because the water, by the time it reaches our property, lessens. It goes 10 or 12 miles, so we have certain hours in four days only for all our land and we have the whole of the water. While in the villages of Kakopetria, Galata and Sina Oros, which are near the mountain and there is plenty of water, they can all irrigate at the same time. After these first three villages three other villages are taking at the same time, from sunrise onwards, and that is Evrychou, Korakou and Tembria.

Chief Justice : And nobody else takes at the same time as you ?

20 *Mr. Clerides* : Nobody, as nobody takes at the same time as Evrychou, Korakou and Tembria.

Griffith Williams J. : But you take from the dams at these three places, you take from the Evrychou, Tembria and Korakou channels ?

Mr. Clerides : Yes, I take from these channels, the first three villages have the right to irrigate six days, the second group of three villages have the right to irrigate another six days of the week, I have four for the whole water and then Elia has two, again for the whole water.

30 *Chief Justice* : So you would say that you did not have to prove that you suffered any damage to entitle you to an injunction, because your right is the right to the whole of the water in the river at those times, and anybody who takes it or lessens it, shall we say, necessarily interferes with your rights ?

Mr. Clerides : Yes, and of course there was damage, but as we failed to give particulars of damage, we did not go on to insist in proving damages in order to obtain pecuniary damages, but the Court came to the conclusion that we suffered damage, but as we have not given particulars we are not entitled to pecuniary damages.

Chief Justice : Yes, quite.

40 *Mr. Clerides* : In actions in tort, interference with property, no damages can be given unless they are pecuniary damages for which particulars are given. Particulars which can be given have been given in the Statement of Claim.

Chief Justice : As I understand your position, it would be that even if you had not proved any damages you would be entitled . . .

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Mr. Clerides : To nominal damages.

Chief Justice : To an injunction at any rate, because your right is a right to the whole of the water in the river at certain times and any diminution of the quantity which would otherwise be in the river is a diminution of your right.

Mr. Clerides : Yes, my Lord, that is quite right.

Chief Justice : Then you mention in this injunction, in order to show the time when you claim the rights, consequently the time at which other people must not interfere, you mention three dams.

Mr. Clerides : Yes, my Lord, or rather four, isn't it ? 10

Chief Justice : That is just what I am trying to say.

Mr. Clerides : Sanidhi tis Evrichou is one, Vrochtos at Tembria, two, Sanidhi tis Korakou, three.

Chief Justice : And where is the other ?

Mr. Clerides : Three.

Chief Justice : Because in your Statement of Claim you say that you take from four.

Mr. Clerides : Yes, the one is Paliomylos. In that place a small quantity of water passes from that, and at that dam I am entitled to get it, but I did not claim that. 20

Chief Justice : Ought you not to have ?

Mr. Clerides : Well, once they are . . .

Chief Justice : They ought to agree, the injunction and this claim.

Mr. Clerides : Yes, but it is an omission which in any way does not affect my position, because if during my hours they do not take the water at Karvounas and Ayios Nicolaos at these dams, the upper sluices, I will have the water through any other, I will have my water because no other person will interfere if they are stopped from interfering with the water at Frantziko, Karidhi and Appliki then I will have my water at the sluices.

Chief Justice : Yes, the dams at which you actually take your water are mentioned in your injunction only in order to show times. 30

Mr. Clerides : Yes, my Lord.

Chief Justice : Will the time be exactly the same whether you put in Paliomylos or not ?

Mr. Clerides : Yes, my Lord.

Chief Justice : It will be, will it ?

Mr. Clerides : Yes, it will be.

Chief Justice : We suppose so, we do not know.

Mr. Clerides : It is quite so. The moment the Kakopetria people, during the hours I mentioned, do not take the water at the Frantziko and other dams, I will have the water in the sluices below from which I will take the water. 40

Chief Justice : So "any other dam" must refer not only to these little new dams in Ayios Nicolaos of which there may be many, but it must refer to the two old and big ones in Karvounas also ?

Mr. Clerides : Quite true, my Lords, I think that is so. They were not specifically mentioned because they have not been interfered with. We have not been interfered with in these dams.

Chief Justice : And were interfered with . . . ?

Mr. Clerides : At Frantziko.

Chief Justice : Only ?

10 *Mr. Clerides* : Yes.

Chief Justice : Because you have got there Ayios Nicolaos.

Mr. Clerides : Ayios Nicolaos again it is a dam, it is not even mentioned in that sketch because . . .

Chief Justice : None of the dams are.

Mr. Clerides : Well, they are given numbers. No. 1 is Frantziko, I think.

Chief Justice : No. 1 is on a channel, No. 1 is where the sluice actually is, according to our present information.

20 *Mr. Clerides* : It is the Frantziko sluice. Is it not connected with the river ?

Chief Justice : It is, but it is not on the river.

Mr. Clerides : It is on the main channel.

Chief Justice : Any difficulty that might arise from that will be removed when we get our other map and a person to prove it.

(*Mr. Clerides looks at map in Court.*)

Mr. Clerides : The Frantziko dam must be somewhere here.

Chief Justice : Yes, I mean it is not marked on it ?

Mr. Clerides : Not marked.

30 *Chief Justice* : But we will have all that on the map that we are going to get.

Mr. Clerides : Yes, my Lord.

Chief Justice : And the *ab antiquo* rights which you had to prove were rights relating to the dams mentioned—these four dams—in your Statement of Claim ?

Mr. Clerides : Yes, my Lord.

Chief Justice : Nothing to do with these dams higher up ?

Mr. Clerides : No.

40 *Chief Justice* : They take their water lower down from certain dams which they describe in their Statement of Claim, your *ab antiquo* rights are to take water from these four dams ?

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Mr. Clerides : Yes, but two have the whole water during my time not interfered with upwards. I am not taking the water from the Frantziko or the other dams because I cannot, that water will fall into the river and take it at the sluices.

Chief Justice : Quite. So these are the points at which you had to prove, and the Court considered that you did prove, *ab antiquo* rights to take water at the dams that you claimed, these four lower down ?

Mr. Clerides : Yes.

Chief Justice : Thank you very much. Mr. Houry ?

Mr. Houry : As I said in my opening address, my Lords, it is on 10 the Plaintiffs to satisfy the Court that they have rights to the water from the four dams mentioned in the Statement of Claim, Frantziko, Ayios Nicolaos, Appliki and Karidhi, on two grounds, one is their title deeds and two as *ab antiquo* user. In reading the title deeds which were submitted, I need not repeat the comments which I submitted yesterday, but I would like to submit that these title deeds are all Petra title deeds, Petra registrations, and in so far as they go they cannot go beyond the village boundaries of Petra, and it would, in my humble submission, be an error to give a meaning to these title deeds beyond the village boundaries of Petra, unless proof is forthcoming that the other villages through 20 which the river happens to pass were parties to the issue of these title deeds, either that the rights of the water that passed through their own village are also registered in their own village.

Coming to the *ab antiquo* user, I do not feel that there could be any restriction to anything, any right, any lawful right being established by that user, no matter how arbitrary it may seem. No right provided it is lawful and it is being applied for very many years. There is no restriction. For instance, there is nothing at all unlawful in an upper riparian village satisfying completely its irrigation necessities and only the surplus going to other villages. There is nothing unlawful in anything 30 like this. And it is up to the village that is claiming rights higher up to satisfy the Court that it has had an *ab antiquo* right to the water in the way and in the manner which they claim. Here, in this case, it was up to the village of Petra to prove that they have consistently had this water from time immemorial without any interruption, without any interruption or abandonment. From the four dams from which Kakopetria gets its water.

Chief Justice : Of course, we have said a moment ago, what they have to prove is the *ab antiquo* right to take the water of Karkotis and the whole of it from the dams further down from which they actually take 40 it and if you interfere with that right by diverting it at Frantziko and elsewhere they say they have a right to stop you.

Mr. Houry : That is the whole point, they have to prove that they have a right to stop us using the water, and if they prove that they will succeed, but they must satisfy the Court that they have used that right without abandonment or interruption. Because in the authority I cited yesterday in volume 12 there is a dictum which is repeated in another decision, there is a query whether an *ab antiquo* right which has been abandoned is such a right as the Court can enforce. It is volume 12.

Griffith Williams J. : What does it mean, an *ab antiquo* right which has been abandoned can be enforced? You mean the abandonment can be enforced?

Chief Justice : That means they can lose it by abandoning.

Mr. Houry : That is how it is expressed : " As a general rule of law it is clear that rights of irrigation are governed by *ab antiquo* user, but we doubt whether user which has been discontinued for a substantial length of time would be such user as the law contemplates." That is how it is expressed.

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10 *Chief Justice* : There is slight difference between your view and the view I understood Mr. Clerides to put before me. It may be material. You say that they have to prove some *ab antiquo* rights in respect of Frantziko dam and the other three, which are up there. The way I was putting the case to Mr. Clerides a moment ago was that he had to prove an *ab antiquo* right to take the whole of the water of the Karkotis river from the dams much lower down.

Mr. Houry : That is so, my Lord.

20 *Chief Justice* : From the dams much lower down, and if he proved that and then if you behaved, so to put it, in such a way higher up as to prevent him from getting the whole water at the dams to which he is entitled to-day they have a right to complain, but these *ab antiquo* rights are related to dams much lower down, not to Frantziko and the others except indirectly.

Mr. Houry : That is so. But my learned friend goes to the length of submitting not only that he is entitled to have the whole water of these four dams, but he says that : I have a right to stop you from diverting this water from these four dams at Kakopetria, and that right I claim by force of title deeds or by *ab antiquo* user.

Chief Justice : These four dams or any other dams.

30 *Mr. Houry* : In my submission it can only be these four, because it is clear from the title deeds that they cover the water in the four dams in Kakopetria, or alternatively that he can by *ab antiquo* user prevent Kakopetria people from diverting the water from these four dams.

Chief Justice : It does not only mean these four dams, any dam.

Mr. Houry : We are only concerned with these four dams.

40 *Chief Justice* : But it seems to me that the correct way to put their claim is that their claim is to the whole of the water in the Karkotis river, at the dams from which they are entitled to take it, and if you stop the water getting to them which would ordinarily get to them at the proper time, whether you did it at these four dams or anywhere else does not matter.

Mr. Houry : That is so, but his claim is to take the water at these four dams, but he also says that no one should interrupt the water during the hours he is entitled from any spot higher up, and in order that he should succeed in establishing that right he must show that by *ab antiquo* user the Petra people had been using all the water during the hours

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allotted to them from all the sources including the four dams at Kakopetria, in order to succeed they must show that they have always guarded the water and got it.

Chief Justice : What he really means is that he is entitled to all the water running down those two arms at these times.

Mr. Houry : Yes, and what is the contention of the Kakopetria people? Their contention is that "We are entitled to take as much water from the two arms, from the four dams, to irrigate our lands, in all hours of the day, throughout all days in the week," and the question is to decide which of the two contentions is the correct one. Now, on 10 this point, I would like to remind the Court that there is no documentary evidence of any sort as regards the *ab antiquo* user, the only evidence is oral, and we know that the oral evidence in the estimation of the Court was insufficient to persuade the Court about the rights of the Plaintiffs to the water, it had to fall back on corroborative evidence which consisted of documents, and by interpreting the documents in the way the trial Court did it found for the Plaintiffs.

Now, on this question of *ab antiquo* usage, the documentary evidence is not helpful, and I submit most respectfully that the Court was influenced in finding for the Plaintiffs, and as regards the *ab antiquo* user by the 20 documentary evidence which was submitted. A thing which the Court had pronounced itself unable to do for the solution of the other major issue between the parties.

Chief Justice : What major issue?

Mr. Houry : The major issue concerning the extent of the rights in the river Karkotis, that is really where the Court concentrated the greater part of the judgment, it deals with the rights of the Plaintiffs on the Karkotis river and it said: "We could not decide without the aid of documentary evidence" and it found the documentary evidence supported the version of the Plaintiffs and gave judgment for them. But with 30 regard to *ab antiquo* user documentary evidence is wholly wanting, that is why I say that the issue as regards the user must be resolved on the oral evidence that was submitted. I will not comment on the evidence that was submitted by the Kakopetria people as regards the *ab antiquo* user because they all say that they have been using the water at all hours every day and every week of the year. But I would like to review briefly the sort of evidence which the Petra people, which the Plaintiffs, submitted to the trial Court to show that they did substantially exercise their rights to the water in the four dams of Kakopetria, and this is roughly what the witnesses for the Plaintiffs have deposed: The Plaintiffs produced 40 all 11 witnesses, of whom two are Land Registry officials who are not helpful at all in the matter. The first witness told the Court that he used to divert the water ten times in every year.

Chief Justice : Did you give us this yesterday?

Mr. Houry : No, I did not touch on this yesterday. But no owners at Kakopetria ever saw him do so. This appears in the notes at page 14 The second witness said he was never present when the shadow of a man was measured at Kakopetria. He only diverted the water once at Ayios Nicolaos and he was not seen by anyone. He was not seen on

any other occasion by Kakopetria people above Kakopetria. This appears from the notes at page 18. Witness 3 says that during 15 years' experience at Frantziko dam he was only seen by three persons (page 22), who contradicted him. The contradictions appear in the evidence of Charalambos Violari, pages 93 to 96, and Alexandros Savva, pages 57 to 60. He said he measured the shadow at Frantziko and he was always seen by one and the same man. (Notes pages 57 to 60.)

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Chief Justice: By the way—if you will excuse me a moment, Mr. Houry, I would like to ask Mr. Clerides this, as it rather concerns
10 your evidence. What is the importance of the shadow at Frantziko? Because the time at which you are entitled to take your water depends upon the length of the shadow at the dams lower down from which you take water.

Mr. Clerides: It may be that the measure at Frantziko was on a Friday, on Friday Kakopetria was taking the water up to sunrise.

Chief Justice: I mean, so far as you are concerned, what is the importance of the length of the shadow at Frantziko?

Mr. Clerides: Of no importance at all, but the witness may at the same time have been guard of another village as well and may have gone
20 to take the water when the shadow of a man was 7 feet. He was not asked "Have you measured the shadow at Frantziko?" He said yes, once I did, and it may be that at that time he was guard of . . .

Chief Justice: But you are not concerned with the length of the shadow at Frantziko?

Mr. Clerides: No.

Chief Justice: Thank you very much.

Mr. Houry: Witness 4 is only a man of 25 and he only once went to the dam. Witness 5 tells the Court that he was seen by several witnesses diverting the water from the Frantziko dam, a thing which all the other
30 witnesses contradicted, it is not from the Frantziko dam that they diverted the water but from the Frantziko sluice. Witness 6 never went to divert water at the Frantziko dam (page 29). Over a period of 30 years he diverted water on 30 occasions, and he names four persons as having seen him. He is contradicted by all these four. Witness 7 says that he visited Kakopetria dams from the year 1909 to the year 1925 only 10 to 15 times each year, he used to take up duty near Vassiliko and he used to go on Sundays to Ayios Nicolaos and Frantziko and he can only remember one man, Yannis Papa Antoni who saw him. He was never
40 called as a witness. In 25 years two men saw him (page 33), he is contradicted by both these men. Witness 8 does not know anything about the rights of the Kakopetria people (page 35). Witnesses 9 and 11 are Land Registry clerks and they do not give any evidence on this point. Witness 10 was never present when Kakopetria people diverted water at the rising of the Pleiades (page 47). He was alone when he diverted water at Frantziko, he was never seen by any Kakopetria people either at Karidhi or Appliki. Witness 12 does not know the name of the Kakopetria people who saw him divert the water. Witness 13 was never at Kakopetria at the rising of the Pleiades. Witness 14 never diverted the water above Kakopetria, he does not know the names of the tributaries
50 above Kakopetria.

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Now, this is roughly the oral evidence on the question of the usage, and in my humble submission it is wholly inadequate to establish a continuous system of user to the water in the way that my learned friend claims.

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The case cited by my learned friend in the morning is a case which was tried in 1901, it is reported in volume V of the Cyprus Law Reports, page 82, naturally he is perfectly entitled to refer your Lordships to the principle of the law which the decision establishes, but in my submission he had no right to refer the Court to the facts, because he tried to put the facts in at the hearing of the present case and the trial Court rejected 10 the reception of that file of the proceedings.

Mr. Clerides : I did not insist.

Mr. Houry : This appears from the notes at page 102.

Chief Justice : Well, we know we cannot use the facts of that case as facts in this one.

Mr. Houry : As regards the admission of the Survey maps, Exhibits 1 (A), (B) and (C), the trial Court did not admit the maps under section 4 of our Evidence Law, Law 14 of 1946, but under section 17.

Chief Justice : The point is whether they are admissible or not, not the reason for which the lower Court admitted them, because the higher 20 Court very often agrees with the lower Court but for quite different reasons.

Mr. Houry : Yes, obviously your Lordships are entitled to admit the documents for other reasons, if your Lordships will make a ruling on that point, undoubtedly, but in my submission the trial Court admitted these documents under section 17 and unless they are admitted by your Lordships under another section, we have now to judge their admissibility from the provisions of section 17. Now, under section 4 it is impossible to admit the maps because the maps are not originals, and the Court did not make an order under section 4 (2) (b) to accept them. The 30 documents, under section 4, must be original documents. I am reading from section 4 (1) : " In any civil . . .

Chief Justice : Won't this point rather drop out when we get a map ourselves ?

Mr. Houry : I am only commenting on the maps that were admitted, my Lords. Well, under section 17 I submitted already that they cannot be admitted. My learned friend suggested that Exhibit 2 was prepared under Law 5 of 1880, this appears from the notes at pages 39 and 40. But the witness who produced Exhibit 2 could not say under what section of the Law of 1880 it was prepared. And I may refer your Lordships to 40 his testimony recorded at page 39. Then my learned friend goes on to say that that Exhibit 2 could be admitted as being an ancient document. Now, it was not tendered in the trial Court as an ancient document, nor was any proof of custody, which is essential in such cases, produced. There was no ruling as regards custody while under section 4 of our law because evidence of custody was not tendered. The witness who produced it only saw it two or three years before giving his evidence, according to his version, and he does not know under what section of the law it was prepared. The author was unknown.

Mr. Clerides : There is evidence as an ancient document on page 39, and under proper custody, at page 39.

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Mr. Houry : Yes, but it is worthless ; he says it is an ancient document, but it is for the Court. Then it cannot be admitted under section 4 of our law as my learned friend has suggested, because the maker of Exhibit 2 is unknown, it is unknown to the witnesses who gave evidence, anyhow. Their Honours in the Court below admitted Exhibits 5 and 6 not as ancient documents as my learned friend has invited your Lordships to find this morning, but they were admitted because they were public documents, and this appears from the notes at page 42 : "*Court* : Plan and report put in marked Exhibits Nos. 5 and 6. Reference Phipson on Evidence." It is clear from the reference which the Court makes in admitting these two exhibits, it refers to Phipson on Evidence, 7th edition, pages 344 and 345.

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Chief Justice : We have got all this from what you told us, you know.

Mr. Houry : Yes, I am only making this remark because my learned friend said that they were admitted as ancient documents, they were not admitted as ancient documents but as public documents.

Chief Justice : Yes, you have told us that.

20 *Mr. Houry* : My learned friend then referred your Lordships to the evidence of two or three witnesses for the defence who spoke about the time when the Galata people could take water from the two dams, Kapadhoka and Vassiliko. I may remind your Lordships that in every case the witnesses referred to these two dams and not to the other ones that are in issue.

I don't think I have anything else to say, my Lords. Yes, I have mentioned to your Lordships yesterday, my learned friend tells me that in case the Plaintiffs do not prove the *ab antiquo* right which they claim, no matter whether we do prove or do not prove our rights to the water
30 as we alleged, we would still be entitled to judgment.

Chief Justice : That is admitted in the judgment of the Court.

Mr. Houry : Yes, thank you, my Lord.

The Court rose at 7.15 p.m. and adjourned sine die.

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EVIDENCE of Christakis Savvides.

29th March, 1950.

Court resumed hearing.

Appearances as before.

Mr. Myrianthis for Mr. Haggipavlu.

40 *Chief Justice* : You now have the map with you you were good enough to have prepared at our request, and you have somebody to put into the box who can explain it to us ?

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Mr. Clerides : Yes, my Lord.

CHRISTAKIS SAVVIDES, sworn.

Chief Justice : What is your position, Mr. Savvides ?—*A.* Second grade clerk, Land Registry Office.

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Q. Are you a surveyor ?—*A.* No, I am a Land Registry clerk.

Q. You can make a plan, I suppose ?—*A.* Usually with the assistance of the Survey Department.

Q. You produce a plan showing what ?—*A.* I produce a plan showing the rivers and channels.

Plan produced and marked Exhibit A.

10

Q. Just tell us what that plan shows ?—*A.* The rivers are shown in blue colour.

Chief Justice : You have seen that, I hope, Mr. Houry ?

Mr. Houry : No, but Mr. Tavernaris has seen it.

Mr. Clerides : I have seen that, my Lord.

X'n. continued :

Q. Just tell us what it shows, will you ?—*A.* It shows the river from the junction below Kakopetria village in two directions. The one through Ayios Nicolaos and the other through Karvounas.

Q. Through Karvounas ? What is Karvounas, a village or what ?—*A.* That is the name of the locality along the Troodos road. 20

Q. And how far forward from the junction does your map go ?—*A.* Over two miles in both directions.

Q. From the junction ?—*A.* Yes.

Q. Southward ?—*A.* Yes, southward.

Q. What is the scale of the map ?—*A.* One over five thousand.

Q. What does it mean in inches to the mile ?—*A.* About 12 inches to the mile.

Q. When you say "about" does that mean more or less ?—*A.* Unfortunately I have not got a scale. 30

Q. Could you send somebody for it ?—*A.* Yes, my Lord.

Q. And the map was made by whom, by you ?—*A.* The map was made in the Government Drawing Office. The dams and channels were shown by me, with their assistance.

Q. Whose assistance ?—*A.* Of the Survey Branch.

Q. Here in Nicosia ?—*A.* Yes, in Nicosia.

Q. But it was made from information supplied by you ? Did anybody go to the spot ?—*A.* Certainly.

Chief Justice : Is there anybody who is more familiar with extracting evidence from witnesses than I am who can get on with this. 40

Mr. Clerides : Yes, my Lord.

X'n. continued Mr. Clerides :

Q. You have been instructed to make a local enquiry and prepare a plan ?—*A.* Yes.

Q. And you took with you copies of the survey plans, existing copies of the survey plans?—A. Usually, yes.

Q. And you went to the spot with whom?—A. I went to the spot with the mukhtar of Kakopetria.

Q. When?—A. On the 15th March.

Q. And did you walk along the branches of the river, both branches of the river, from the junction upwards, with the survey plans in your hands?—A. Yes.

10 *Chief Justice* : Did you have anyone else with you, any surveyors?—
A. No.

Q. Just you and the mukhtar?—A. The mukhtar of Kakopetria, the mukhtar of Petra and some other villagers.

Mr. Clerides : And you marked on that survey plan the various dams?—A. Yes, on each branch.

Q. On the Karvounas branch you marked the two Karidhi dams?—
A. Yes.

Q. And the Appliki dam?—A. And the Appliki dam.

Q. Two?—A. It is Karidhi and Pefkos.

Q. Which are both called Karidhi?—A. Yes.

20 Q. How do you know that they are both called Karidhi?—A. We know, from our records.

Chief Justice : Did you know the locality yourself?—A. Yes.

Q. Did you know it before?—A. Yes.

Q. And you knew the names of these dams from before?—A. Yes.

Q. You know that place well?—A. Very well.

Q. You have often been there?—A. About 15 years.

Q. You go there often?—A. Yes, every summer.

(*Witness now measures the scale and says*) : A. $12\frac{1}{2}$ inches.

30 *Mr. Houry* : I stand to be corrected, it is 12.87 inches to the mile. I worked it out.

Witness : There is shrinkage of the paper.

Chief Justice : Very well; you say you marked the Karidhi and Pefkos dam on the Karvounas river?—A. Yes.

Q. Do you know it as the Karvounas river?—A. I cannot say this.

Q. You say you have been going to this place for 15 years, do you know the name of the river?—A. I cannot say.

Griffith Williams J. : Karvounas, I understand, is the name of the locality there through which that branch of the river flows?—A. Yes.

Q. It is just the locality?—A. Yes.

40 *Chief Justice* : Has the river got any name?—A. I cannot say.

Mr. Clerides : And you marked also Appliki dam on that branch?—
A. Yes.

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Q. Did anybody tell you the names of these dams?—*A.* Yes, people who were with me.

Q. Who? The two mukhtars?—*A.* The two mukhtars.

Q. The mukhtar of Petra and the mukhtar of Kakopetria told you that the names of those dams were the names you put on the plan?—*A.* Yes.

Chief Justice: Did you know the names of the dams of your own knowledge?—*A.* Beforehand, yes.

Griffith Williams, J.: They confirmed the names?—*A.* Yes.

Mr. Clerides: On the branch passing through Ayios Nicolaos 10 Monastery you marked four dams?—*A.* Yes.

Q. Ayios Nicolaos dam?—*A.* Yes.

Q. Frantziko dam?—*A.* Yes.

Q. Kapadhokas dam?—*A.* Yes.

Q. And Vassiliko dam?—*A.* Yes.

Q. Now, having marked on the survey plans these points, the course of the rivers and these points, what did you do? Out of that survey plan what was prepared?—*A.* This plan which I produced.

Q. Out of the notes you made and of the survey plan this plan was prepared?—*A.* This plan was prepared. 20

Q. And this plan is correct to your personal knowledge?—*A.* To my personal knowledge and belief it is correct.

Chief Justice: You have what looks like a smaller river marked in black which flows into the Ayios Nicolaos branch between the Frantziko and the Kapadhokas dam?—*A.* That is another river flowing from Apotheri locality.

Mr. Clerides: Is that a village or a locality?—*A.* It is a locality.

Q. Has it always got water in it?—*A.* I think there is always, but as far as I can recollect it has nothing to do with these rivers.

Chief Justice: Well, it flows into one of them, doesn't it, according 30 to your map?—*A.* Well, it flows.

Mr. Clerides: Is it a river or is it a brook?—*A.* It is an "arghaki." A brook.

Chief Justice: As far as you know there is always water in it?—*A.* Yes.

Q. Are there any dams in it?—*A.* I do not know, the only thing I know is that there are tanks, big tanks, prepared by the Water Irrigation Department.

Mr. Clerides: Three are tanks in which water is collected for irrigation prepared by the Irrigation Division?—*A.* Yes. 40

Mr. Houry: By the Kakopetria Irrigation Division?—*A.* I do not know.

Chief Justice: I have in mind the claims in which you claim an injunction which relates to "any other dam" besides those mentioned.

Mr. Clerides : Yes, my Lord, dams in the main river, dams in the main branches, because it may be that in some of these things like this arghaki they may take water and irrigate before it falls into the main river, we do not claim that, we claim what is in the main river, in the main branches of the river, because these may be trivial, a small quantity of water which is in summer practically extinguished, there is nothing much in it, it is a small one.

X'n. continued :

10 *Chief Justice* : And then, just above the Ayios Nicolaos dam there is another branch, in black ?—*A.* That is Kokkinorotsos.

Q. Is that the name of the tributary, the river ?—*A.* Yes.

Q. And in fact the Ayios Nicolaos dam is in that tributary ?—*A.* Yes, in that tributary.

Q. Not in the Ayios Nicolaos branch of that river ?—*A.* It is in the Kokkinorotsos.

Q. Is that the name of the tributary or the name of the locality or what ?—*A.* The name of the tributary.

Chief Justice : That is something we have not had ?

Mr. Clerides : It is mentioned.

20 *Chief Justice* : As being a tributary in which this particular dam was ?

Mr. Clerides : No, it was mentioned as a part of the river, but this one is called Kokkinorotsos.

Chief Justice : Ayios Nicolaos ?

Mr. Clerides : That branch over Ayios Nicolaos which goes to the right is called Kokkinorotsos.

Chief Justice : But it is a new fact that one of these dams about which we have been talking is not in either of the branches we have been talking about.

30 *Mr. Clerides* : Yes, but we considered that Kokkinorotsos was only part of Karkotis, I mean not a separate river, but all the tributaries formed one river, and whether it was in the main river or in a branch of it we considered it as being in the main river.

Chief Justice : Still, it now appears that it is not in either of the main branches.

Mr. Clerides : No, it is not. If it is of interest, my Lords, the witness might be asked whether above that dam there is any irrigable land, because above the dam of Ayios Nicolaos there are no irrigable lands at all.

(*Question put to the witness.*) *A.* There may be, there are, but not much.

40 *Griffith Williams J.* : You said there were tanks in the other river you spoke of made by the Irrigation Division of Kakopetria, what were they supposed to water ? Would they be to water land above the Ayios Nicolaos river ?—*A.* There are irrigable lands all along that stream.

Q. That would be above the dam at Ayios Nicolaos ?—*A.* Below.

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Chief Justice : Did you see any other dams on that tributary which you call Kokkinorotsos ?—*A.* No, my Lord.

Q. No dams above there ?—*A.* No.

Q. Do you mean you know there are not, or what ?—*A.* Nothing was shown to me except that dam.

Q. But you walked along that tributary, Kokkinorotsos ?—*A.* Not Kokkinorotsos, no, because I was told there was no need to trace it to its source.

Q. All right, but as far as you have traced it. Did you walk along it ?—*A.* Yes. 10

Q. And are there any dams in it ?—*A.* No, except this one.

Q. No dam higher up, as far as this map goes, on the Kokkinorotsos tributary ?—*A.* I do not know.

Mr. Clerides : With regard to Kokkinorotsos he says that he only walked up to the point which is marked in blue, he went up to there, and up to there there is no other dam. He cannot say from there upwards.

X'n. continued :

Chief Justice : And now this other branch of the Ayios Nicolaos, the upper branch, the one which comes up in blue, is this all called Ayios Nicolaos ?—*A.* I cannot say. 20

Q. You walked along this blue one ?—*A.* Yes.

Q. Are there any dams there where you walked ?—*A.* No.

Q. And on the Karvounas branch, are there any dams higher than Karidhi that you saw ?—*A.* There are one or two small ones.

Chief Justice (to Mr. Clerides) : Are all these included in the injunction that you have got ?

Mr. Clerides : No.

Chief Justice : It is very difficult to know what is, isn't it ?

Mr. Clerides : We are not interested. As I said, my Lords, there are several other dams, we are not interested in the small dams, because the small dams will be used to irrigate a small piece of garden or another small piece of garden by the side of the river, that won't affect the position. 30

Chief Justice : What are the dams you are interested in ?

Mr. Clerides : These main dams, I am only interested in these main dams in the river. From each of these dams a large amount of irrigable land is irrigated.

Chief Justice : If we take this right-hand branch, that is Karvounas, you are interested in Karidhi ?

Mr. Clerides : Yes, Karidhi.

Chief Justice : What you would now call Pefkos ? 40

Mr. Clerides : Yes.

Chief Justice : Appliki ? Appliki and nothing else.

Mr. Clerides : Appliki and nothing else. And in the other, these four dams.

Chief Justice : Vassiliko, if we begin from the junction and work upwards, Vassiliko ?

Mr. Clerides : Yes.

Chief Justice : Kapadhokas ?

Mr. Clerides : Yes.

Chief Justice : Frantziko ?

Mr. Clerides : Yes.

10 *Chief Justice* : And Ayios Nicolaos ?

Mr. Clerides : And Ayios Nicolaos. But the Appellants are getting water only from Frantziko.

Chief Justice : Yes, but your injunction which you got goes further ?

Mr. Clerides : Yes.

Chief Justice : The interference was only at Frantziko ?

Mr. Clerides : The interference was only at Frantziko because the Respondents cannot take water from Kapadhokas and Vassiliko because from these two dams it is Galata people and Kakopetria people who own property within the area of Galata.

20 *Mr. Houry* : My Lords, interference is not at Frantziko dam as it appears in the plan. I believe *Mr. Clerides* is wrong, that dam invariably supplies water to the channel which does not appear on the plan up to a point, according to the evidence, between half a mile to one mile where the Frantziko sluice occurs, and the Frantziko sluice does not appear on the plan. It is from there that *Mr. Clerides* says we are interfering, not from the dam.

Mr. Clerides : Yes, but this water is water from the Frantziko dam which goes to the river again at a certain spot of the river, we take it it is the water of the Frantziko dam.

30 *X'n continued* :

Chief Justice : But Frantziko sluice is on the channel which is marked red ?—*A.* Yes.

Q. Do you know where the Frantziko sluice is on the plan ?—*A.* Yes.

Q. You were not asked to mark it ?—*A.* No, I was not.

Q. But you know where it is if you look at that map ?—*A.* Approximately.

Q. Is it on that red line which you call the Frantziko channel ?—

A. It is on that, but further down, my Lord.

Chief Justice : So we have got evidence about that and where it is.

40 *Mr. Clerides* : Yes, my Lord.

Chief Justice : One reason for which I wanted this map was to know exactly how far your claim went and what was included in your injunction. We must know what to do.

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Mr. Clerides : Yes, my Lord. All we are interested in is the water running through these dams which are marked on the plan, we are not interested in some other pieces of property or other small dams, but as from this dam a lot of properties are irrigated we claim that the water should be left free during the time we are entitled to it.

Chief Justice : And how many of these dams in which you say you are interested are used by the Appellants, the Kakopetria people ?

Mr. Clerides : The Appellants are using the Frantziko dam and the Appliki dam and the two Karidhi dams.

Chief Justice : But they do not use Ayios Nicolaos ?

10

Mr. Clerides : Well, Ayios Nicolaos is used only by the Monastery, it irrigates only property of the Monastery.

Chief Justice : Because you ask for an injunction against the Kakopetria people to prevent them from irrigating their lands through the Ayios Nicolaos dam, and they do not do it, do they ?

Mr. Clerides : It is the Kakopetria people who are leasing the property of Ayios Nicolaos and that is how it was included in the injunction. The Monastery is not in existence, there is only an old ruin there, the property belongs to the Archbishop and the Archbishop rents the land to the Kakopetria people, and the Ayios Nicolaos dam can be used only for irrigating the lands of the Monastery which are leased out to Kakopetria people.

Chief Justice : But you are interested in that.

Mr. Clerides : Yes, of course, I am interested in that as far as they are lessees, because they may use the water any time they like and I say that even from Ayios Nicolaos dam they will have the water as the other people of Kakopetria, and during all the other hours the water should be allowed to flow down.

Chief Justice : So you are interested in that dam too and not only in those you mentioned a moment ago ?

30

Mr. Clerides : Yes, it is my mistake.

Chief Justice : And this reference to "any other dam" which is contained in the injunction which you got in the Court below, you do not wish to extend that beyond those dams that are named ?

Mr. Clerides : No, my Lord.

Chief Justice : That is, we had better get it quite clear, Frantziko ?

Mr. Clerides : Yes.

Chief Justice : Appliki ?

Mr. Clerides : Yes.

Chief Justice : Two Karidhi dams ?

40

Mr. Clerides : Yes, and Ayios Nicolaos.

Chief Justice : It is in very wide terms, of course, that injunction, and you have got an injunction in equally wide terms, and it is desirable to know what it really means.

Mr. Clerides : The object of it was not to create any other dam, any new dam, because they might take the water, divert the water by making new dams, apart from those which existed *ab antiquo*.

Chief Justice : It would have been much better to say : "and to prevent them from constructing any new dams."

Mr. Clerides : Yes.

Chief Justice : As it stands it would seem to mean any existing dam, which would have the effect of diminishing the water at the points lower down at which you take water at the hours at which you are entitled to take it. I mean, to construct a new dam is such a different thing, isn't it ?

Mr. Clerides : Well, as a matter of fact there are some new dams between Frantziko and—but in any case these are very small. This is what they are doing, some time they just make a small garden by the side of the river and they take water to irrigate, that won't make much difference.

Chief Justice : But there is a limit to what they can do up there, as you point out, isn't there ?

Just another thing, and then afterwards I propose to ask you if you want to put any questions about the map too, I want to ask one question I have in mind. I wanted to ask you another question to get it clear in my own mind. It arises on this injunction, also, it asks for an injunction to prevent the Appellants from taking water from certain named dams at certain times, and it indicates the time by saying as part of the injunction when the length of the shadow of a standing man at the dam or locality Sanidhi tis Evrychou, is so much. Now, as a matter of practical working of this system, how does anybody standing at Frantziko dam know when the height of a man at Sanidhi tis Evrychou is 7 feet, I mean the shadow of a man, how can you work it practically ?

Mr. Clerides : The position will be this. At Sanidhi tis Evrychou they are entitled to take the water at that time, but previous to that time it is not the Appellants who have the water, the Appellants have the water from the rising of the Pleiades up to sunrise. So the question of 7 feet at Evrychou in the afternoon does not arise. After sunrise the other villages get it, Evrychou, Korakou.

Chief Justice : Actually what you have asked for is an injunction to prevent them, the Appellants that is to say, from taking water at Frantziko dam from a time beginning when the height of the shadow of a man at Sanidhi tis Evrychou is 7 feet ?

Mr. Clerides : No, it is not that.

Chief Justice : Isn't that what the injunction asks ?

Mr. Clerides : No, what I am asking is this . . .

Chief Justice : Look at the words, would you mind, first ?—"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

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the time when the length of the shadow of a standing man at the dam and/or locality ' Sanidhi tis Evrychou ' at Evrychou is 7 feet."

Mr. Clerides : Well, at that time I am entitled to have the water, I say in my Statement of Claim that their right is from the rising of the Pleiades up to sunrise, well, after sunrise they are not entitled to get any water.

Chief Justice : Yes, but what you are actually asking for is something which it seems to me is difficult to administer, to enforce, in the actual terms in which it is expressed. I mean, assuming that you are right, I am not saying that we are of that opinion, but just for the purpose of 10 argument, assuming that you are right, assuming that there are limits on the times when the Kakopetria people can take this water from these dams, assuming all that, you ask here in terms in the injunction for something which it is very difficult to see how you can actually administer, don't you ?

Mr. Clerides : It will be easy in this respect. I am stating in my injunction the times I am entitled to water. Now, at that time the whole water should pass from Sanidhi tis Evrychou, and Appellants should not be at that time entitled to have any water irrigating. As a matter of fact, they have not any right to irrigate from the morning and my right begins 20 in the afternoon. I mean it is not . . .

Chief Justice : If you were combined with a whole lot of other people whose rights cover the whole of the time except the time when Kakopetria could take water, it would be much easier to deal with, wouldn't it ?

Mr. Clerides : Yes, my Lord, but when we brought this action alone then we could not make the other villages join in the action, so we stuck to our right. Our right is when the shadow of a man at the sluice at Evrychou is 7 feet, to have the whole water. Well, that can work, because between sunrise and that time when we are entitled to get water the Appellants have no right to irrigate. And we have our water guards who 30 go up there, they are at Frantziko dam, for instance, very early midday, and they are seeing that the water is flowing in the river, and when our turn comes they will keep guard there to see that nobody interferes with the water.

Chief Justice : But there is a certain difficulty wording it like that.

Mr. Clerides : Yes, there is, I see there is difficulty, we could not ask them not to take water from sunrise because we are not entitled to that.

Chief Justice : No. It might be possible to say that they should not take water at any time which will diminish the natural flow of the 40 river at these particular points at the times at which you are entitled to take the water.

Mr. Clerides : That, of course ; just before the time fixed not to interfere with the water, not to interfere with the water in such a way as to divert the water which should, when the shadow of a man is 7 feet, not to be at that spot, something like that, it is very difficult.

Chief Justice : Yes, it is very difficult because there is the difficulty of knowing at the Frantziko when the shadow of a man standing at the

Sanidhi tis Evrychou is 7 feet. It is something which on the face of it one cannot know.

Mr. Clerides : Yes, but the actual position is facilitated from the fact that from sunrise up to that time in the afternoon they are not entitled to the water.

Chief Justice : Do you want to ask any question of this witness, Mr. Houry ?

Mr. Houry : Nothing in connection with this plan.

10 *Mr. Clerides* ?
Chief Justice : That is all he is here for. And you have no question,

Mr. Clerides : No, my Lord.

X'n continued :

Chief Justice : If you turn to the right-hand branch—I am not sure if I asked you this before—Karvounas, I want to ask you about Karvounas. I forget if you told us whether you saw any dams above the Karidhi dam ?—*A.* Well, there are some small ones.

Q. Is there much irrigable land along the Karvounas branch above the Karidhi dam ?—*A.* Not much, my Lords. There is, in Karvounas, but small plots. In the river.

20 *Q.* A hundred donums ?—*A.* No. Much less, I cannot say.

Q. You were not asked to do that ?—*A.* No.

Mr. Houry : If a statement on my part would be helpful, I am quite prepared to make a statement on this point, there is about 20 donums.

Chief Justice : Above the Karidhi dam ?

Mr. Houry : Yes, 20 donums.

Chief Justice (to Mr. Clerides) : You do not dispute that, I suppose, you are not interested in it ?

Mr. Clerides : No, I am not interested in it.

30 *Chief Justice* : Thank you, Mr. Savvides, for making this plan at our request. It will be very helpful to us. And thank you for your evidence. That is all. (*To Mr. Houry*) : Would you like to say anything on what we have heard ? I mean it does not seem to me obvious that there is more to say when we have got the map.

Mr. Houry : On the evidence as produced to-day I do not think I have anything especially in mind, but if I can be helpful on any point I am quite prepared to answer anything if I can.

Chief Justice : Do you wish to say anything more, Mr. Clerides ?

Mr. Clerides : No, my Lord.

40 *Chief Justice* : We will consider that and give our judgment early next month, that is to say, in a few days time.

The Court rose at 11.35 a.m.

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JUDGMENT.

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Judgment,
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1950.

In the District Court of Nicosia a number of landowners residing in the village of Petra took action against the proprietors of the Irrigation Division of Kakopetria to restrain the Defendants from interfering with the Plaintiffs' rights to take water at certain times and at certain points from the river Karkotis which flows between the two villages.

The Plaintiffs alleged that at the times at which they were entitled, *ab antiquo*, to take water from the river at certain points, for the irrigation of their lands, the Defendants also took water unlawfully through certain dams much higher up and so prevented the Plaintiffs from receiving at these times the water to which they were entitled. 10

The District Court held that the Plaintiffs had established their claim and granted them an injunction against the Defendants in terms to which it will be necessary to refer. The Defendants now appeal against that decision.

The Plaintiffs' village of Petra lies near Morphou Bay, among the last of the low foothills marking the northern end of the Troodos range. The Defendants' village of Kakopetria lies on the slopes of the Troodos range, about 12 miles to the south of Petra and about 1,500 feet higher up. 20
Between the two villages, and extending up the slopes of Troodos, above Kakopetria, there is a complicated river system upon which both villages depend for the irrigation of their lands. So do about a dozen other villages, some quite large, which lie on the slopes between the Defendants' village and the Plaintiffs', but, with whatever interest those villagers may be watching the progress of this case, they are not concerned in it.

What may be called the backbone of this river system is the river Karkotis. There was a dispute as to the point at which this river begins and it will be necessary to revert to that dispute later. We shall only say, now, that the main body of the river, at any rate, begins immediately 30
below the Defendants' village of Kakopetria, at the junction of two divergent arms or tributaries, flowing down from the higher slopes. Whether or not one of the two arms, as we have called them, is itself a stretch of the Karkotis river as the Plaintiffs said it was and as the trial Court found, the two arms have different names. The one which flows from the south-west is called Ayios Nicolaos and passes near the monastery of that name. The other, flowing from the south-east, is called Karvounas. The Karkotis, with these two arms together form the letter Y, the Karkotis being the upright stem and the Ayios Nicolaos and the Karvounas being the two diverging branches at the top of it. 40

The Karkotis river, supplied by the two arms named and by smaller tributaries above and below them, is a perennial stream and, when in flood, flows into the sea of Morphou Bay, though it may be that, in a dry year, little or no water reaches the mouth.

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 villages that lie between. One would naturally suppose that if all the irrigable lands 50

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
10 this case and the disputes arose out of conditions that occurred in the summer of 1941.

Without touching on matters which were in controversy in the case, it can be said that the Plaintiffs, of Petra, receive their water from the river through dams, or sluices, at three points, namely at Sanidi tis Evrychou, Vroktos (near Tembria) and Sanidi tis Korakou. All these points are several miles below the Defendants' village, Kakopetria, and at a considerably greater distance above the Plaintiffs' village, Petra. It is unnecessary, for the purposes of this case, to trace the course by which the water reaches the Petra lands from these three points, passing
20 the lands of other villages on the way.

The Defendants take their water above the junction of the two arms, or tributaries, called Ayios Nicolaos and Karvounas, one of the dams through which they irrigate their lands is the Frantziko dam in the Ayios Nicolaos tributary. Another is the Ayios Nicolaos dam which is higher up and above the junction of Ayios Nicolaos with another tributary. It is not clear whether this dam is the Ayios Nicolaos tributary or in the other, but its identity is beyond doubt. The other points are in the Karvounas tributary and those with which we are concerned are a dam named Appliki and another higher up the tributary, named Karidhi.

30 The dispute between the parties can now be stated. The Plaintiffs, of Petra, claimed that they had the right, *ab antiquo*, to take the water of the Karkotis river at the three points mentioned above, Sanidhi tis Evrychou, Vroktos and Sanidhi tis Korakou on Saturday, Sunday, Tuesday and Wednesday of every week, beginning at the following times in the afternoon, at Evrychou, when the shadow of a man standing at the dam is 7 feet in length; at Vroktos, when the shadow of a man standing at the dam is 6 feet in length; and at Korakou, when the shadow of a man standing at the dam is 7 feet in length. They claimed that their rights continued at those points until the rising of the Pleiades from
40 the 1st May to the 28th August in each year and until the rising of Orion from the 28th August in each year to the beginning of May.

The Plaintiffs further claimed that they were entitled, as against the Defendants, to the whole of the water which would naturally be in the Karkotis river at those points, on those days and at those times and they asked that the Defendants should be restrained from taking water from the Ayios Nicolaos or Karvounas arms or tributaries at the dams above mentioned, or at any other dam, on the days and at the times when the Plaintiffs were entitled to take the water of the Karkotis at Evrychou, Vroktos and Korakou.

50 The Defendants replied that, whatever the Plaintiffs' rights might be, they could only extend to the water of the Karkotis river and that

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this river only began below the village of Kakopetria, at the junction of the two tributaries, Ayios Nicolaos and Karvounas, which were different rivers. Consequently, said the Defendants, the Plaintiffs had no right to interfere with the use of water by the Defendants from the Ayios Nicolaos and Karvounas rivers at any time they liked and in whatever quantity was needed for their irrigable lands.

The Plaintiffs had claimed that their lands and crops at Petra had suffered damage by the acts of the Defendants in depriving them of water and, on this point, the Defendants replied that their irrigable lands were small in extent and that they owned springs of their own which flowed into the Ayios Nicolaos and the Karvounas and supplied as much water as the Defendants took out. 10

It was part of the Plaintiffs' case that, in order to secure that the proper quantity of water reached the three points, below Kakopetria, from which it was led to their lands, they had the right, *ab antiquo*, to station water guards at the dams in the Ayios Nicolaos and Karvounas tributaries, above Kakopetria, and to see that water was not led away through them at the times when the Plaintiffs were entitled to take it from the river lower down. The dispute arose because, on an occasion in June, 1941, the Defendants insisted on taking water through the Frantziko dam at a time when the Plaintiffs said the water was theirs. In reply to the Plaintiffs' claim to control the dams above Kakopetria at those times, the Defendants said that if the Plaintiffs had ever had such rights, which the Defendants denied, the Plaintiffs had lost them by abandonment for many years. 20

The District Court heard a large volume of oral evidence on both sides and considered a quantity of documents, including reports, records, title deeds and maps. Having done so, they gave their conclusions in a carefully considered judgment.

The trial Court recognised fully that the burden of proof lay on the Plaintiffs. They commented on the contradictions between much of the oral evidence on one side and on the other and said that they placed more reliance on the witnesses for the Plaintiffs than on those for the Defendants, particularly on the question of *ab antiquo* user by the former and the times at which they had been accustomed to irrigate their lands. The President said, however, that they would have found it difficult to reach a conclusion but for the documentary evidence put before them and they considered that this corroborated strongly the evidence for the Plaintiffs. 30

The advocate for the Defendants objected energetically to a good deal of the documentary evidence, on the ground that it was inadmissible, but the trial Court received it and, on the whole of the evidence before them they reached conclusions which can be summarised as follows. 40

They held that the Karkotis river did not begin at the junction of the two tributaries below Kakopetria, but that it included at least a portion of the Ayios Nicolaos, flowing down from above.

They held, also, that the rights of the Plaintiffs 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.

The trial Court was satisfied that the oral and documentary evidence, taken together, had established the *ab antiquo* rights which the Plaintiffs claimed, not only to take water on certain days and at certain times at the three points in the river below Kakopetria, but also to prevent the diversion of water by the Defendants above Kakopetria on those days and at those times. The trial Court held, further, that these latter rights
 10 had not been lost by abandonment, since it was only since the dispute between the two villages arose in the summer of 1941 that these particular rights had not been actually exercised by the Plaintiffs. They had never ceased to claim them.

There was also the Defendants' allegation that they put back into the main river, through their private springs, as much water as they took out. On this point, the Court having remarked on the absence of any satisfactory evidence, took the view that the main issue was not affected. If, as the Court found, the Defendants had taken water which
 20 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. The question of damages might have been affected by this point, but it could not affect the rights of the parties, and on this aspect of the judgment we can say at once that we think that the trial Court was right.

On the question of damages, the Court considered that, while some damage must have been caused to the Plaintiffs, none had been proved and, since the point was not pressed on them by the Plaintiffs, they awarded none.

It will be seen that a large part of the conclusions of the trial Court
 30 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.

A most important finding was that the rights of the Plaintiffs to take water from the Karkotis river extended to the water of the two tributaries, Ayios Nicolaos and Karvounas. Having regard to the physical nature of this river alone, we think that the trial Court was bound to come to that conclusion. A river extends to its source and, wherever
 40 the source of the Karkotis may be, it is not at the junction of the two arms or tributaries below Kakopetria. We have called them arms or tributaries for convenience of description but, in actual fact, that description must be wrong in regard to at least one of them and possibly to both. If, as the Defendants said, the rights of the Plaintiffs were limited to the water that happened to be in the Karkotis river below Kakopetria at the times when they were entitled to take it, and if the Defendants were entitled to do what they liked with the water of the Ayios Nicolaos and Karvounas whenever they liked, and to be completely unconcerned with shadows and constellations and days of the week, the rights of the Plaintiffs, and indeed of every other village below Kakopetria, would be worthless.

50 The locality of the source of a river is a matter of fact and not of names and the fact that title deeds and other documents describe the

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Karkotis river as flowing from Troodos adds nothing to our knowledge, since it is inescapable that it does, though its true source may not have been identified and is certainly not in evidence in this case.

Documentary evidence describing the Karkotis as coming from Troodos seems to us unimportant, one way or the other. There is no suggestion that either the Ayios Nicolaos or the Karvounas was diverted into the Karkotis at any time with which we need be concerned. We must assume that it was always so and the whole intricate organisation for the distribution of water to all the villages below Kakopetria must be based on the premise that it is dealing with the water which flows 10
down the bed of the Karkotis from those two arms. As far as the evidence goes, no appreciable quantity of water reaches the river from any other source, and the claim of the Defendants would reduce the whole organisation to an absurdity.

We think, therefore, that the District Court was right in holding that the *ab antiquo* rights of the Plaintiffs, assuming these to be established, to take water from the Karkotis river, at the points and at the times mentioned in their claim, extended to the water flowing into the Karkotis from the Ayios Nicolaos and the Karvounas, and included the right to prevent the diversion of water by the Defendants above Kakopetria, at 20
those times.

We see no reason to differ from the finding of fact by the District Court that the latter rights, if they existed, had not been lost by abandonment. That finding did not depend on documentary evidence.

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.

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 30
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. It is an official document, produced from the proper custody and it is nearly 50 years old. It was admitted by the District Court under section 4 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 40
ancient document produced from proper custody.

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.

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 which they based their conclusion that the Plaintiffs had established the *ab antiquo* rights that they claimed. We have already commented on the findings of the Court that followed from that conclusion.

The injunction granted to the Plaintiffs was in the terms of their claim. The restraint imposed on the Defendants related expressly to the Ay. Nicola and Frantziko dams and "any other dam." The discussion of this appeal showed that the interest of the Plaintiffs is really in the four dams, Frantziko, Ayios Nicolaos, Appliki and Karidhi, and that the reference in the injunction to "any other dam" may possibly lead to confusion. We think, therefore, that these words should be deleted from the injunction and that the names of the dams Appliki and Karidhi should be inserted in place of them.

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10 Subject to that alteration of the wording of the injunction, we think that this appeal must be dismissed with costs.

(Sgd.) E. ST. J. JACKSON, (Sgd.) G. C. GRIFFITH WILLIAMS,
Chief Justice. J.

6th April, 1950.

No. 39.

APPLICATION of Defendants for leave to appeal to His Majesty in Council.

To the Honourable Judges of this Honourable Court
and to this Honourable Court :

No. 39.
Applica-
tion of
Defendants
for leave to
appeal to
His Majesty
in Council,
22nd April
1950.

20 THE HUMBLE PETITION of the Defendants (hereinafter referred to as "your petitioners") showeth as follows:—

1. On the 26.9.1941 the above-named Plaintiffs instituted the above action against your petitioners whereby the Plaintiffs claimed (1) "an injunction restraining the Defendants, their agents and servants from in any way unlawfully interfering with the water, and/or the Plaintiffs' rights 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
30 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 'Vroktos' 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"; and (2) "£700.0.0 as damages for the loss and injury caused to the Plaintiffs by the Defendants' unlawful
40 interference with the water and/or right described above and for the sum of £10.0.0 as damages for each day hereafter the said interference continues"; and (3) legal interest from the 26.9.1941 on the above sums and the costs of the action.

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tion of
Defendants
for leave to
appeal to
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2. Your petitioners and the Plaintiffs duly appeared and on or about the 16.10.1943 the Plaintiffs delivered to your petitioners their Statement of Claim praying, amongst other things, as stated in paragraph (1) hereof. On or about the 29.5.1944 your petitioners delivered to the Plaintiffs their Defence and Counter-claim. On the 3.6.1944 the Plaintiffs delivered to your petitioners their Reply and Defence to the Counter-claim which eventually closed the pleadings in the case.

3. On the 17.5.1948 the trial of the above action opened, was continued on the 18.5.1948, 19.5.1948, 21.6.1948, 22.6.1948, 23.6.1948, 25.6.1948 and was concluded on the 26.6.1948 when the District Court 10 of Nicosia reserved their judgment. At the trial the following witnesses gave evidence for the Plaintiffs :

- (1) Michael Anastassi
- (2) Rodosthenis Michael
- (3) Yannakos Theopistis
- (4) Polis Victoras
- (5) Hilarios Joannou
- (6) Michael Pavlu
- (7) Loizos Nicola
- (8) Mehmet Raif Hadji Mullazim
- (9) Christakis Savvides
- (10) Yangos Petrou
- (11) Djevdet Mirata
- (12) Behlul Mustafa
- (13) Papa Georghios Tofis
- (14) Tofis Papa Yanni.

20

And the following witnesses gave evidence for the Defendants :

- (1) Alexandros Savva
- (2) Nicolaos Joannou
- (3) Yannis Vassiliou
- (4) Georghios I. Papa
- (5) Hambis Makris
- (6) Yannis Demosthenis
- (7) Thrassivoulos Joannou
- (8) Sofoclis Hadji Charalambous
- (9) Procopis Kounnas
- (10) Athanassios Loukas
- (11) Grigoris Joannou
- (12) Christofis Myrianthopoulos
- (13) Charalambos Violaris.

30

40

At the trial the following exhibits were put in evidence by or on behalf of Plaintiffs or by the Plaintiffs' witnesses on cross-examination :—

- | | | | |
|---------|-------|---|---------------------------|
| Exhibit | 1 (A) | } | Survey plans. |
| " | 1 (B) | | |
| " | 1 (C) | | |
| " | 2 | } | Field Book. |
| " | 2 (A) | | |
| " | 2 (B) | | |
| " | 2 (C) | } | Entries in Field Book. |
| " | 3 (A) | | |
| " | 3 (B) | | |
| " | 3 (C) | } | Entries in Land Register. |

50

	Exhibit 4	Instructions to Mustafa Zia dated 11.8.1893.	<i>In the Supreme Court of Cyprus.</i> No. 39. Application of Defendants for leave to appeal to His Majesty in Council, 22nd April 1950, <i>continued.</i>
	„ 5	Report and Reference of Salim Effendi dated 18.8.1901.	
	„ 6	Salim Effendi's plan.	
	„ 7 (A), 7 (B), 7 (C), 7 (D), 7 (E)	} Entries in Land Register.	
	Exhibits 8 (1) to 8 (12)		
10	„ 9 (A)	Sketch of Pleiads.	
	„ 9 (B)	„ „ Orion.	
	Exhibits 13 (A), 13 (B), 13 (C), 13 (A-1), 13 (B-1), 13 (C-1)	} Entries in the Land Register.	
	Exhibits 13 (A-2), 13 (B-2) 13 (C-2)		
	Exhibits 14	Search.	
	„ 15	Certificate.	
	„ 16	Consent.	

20 And the following Exhibits were put in by or on behalf of your petitioners :—

Exhibit 10	1 title deed.
„ 11	Print of a notice of Irrigation Division of Kakopetria.
„ 12	1 title deed.

The following of the above-mentioned exhibits were admitted by the trial Court in evidence against the objection of your petitioners to their admissibility :

30 Exhibits 1 (A), 1 (B), 1 (C), 2, 2 (A), 2 (B), 2 (C), 4, 5, 6, 13 (A-2), 13 (B-2), 13 (C-2), 16.

4. On the 6.11.1948 the District Court of Nicosia gave judgment in the above action (read by its President) whereby the Court granted the injunction in the terms of paragraph 12 (A) of the Statement of Claim (as set out in paragraph 1 (1) hereof) and ordered your petitioners to pay to the Plaintiffs the costs of their action, the Court allowing costs for two advocates.

40 5. On the 17.12.1948 your petitioners appealed to this Court from the judgment of the District Court of Nicosia in the above action referred to in paragraph (4) hereof, which appeal was heard on the 9.3.1950, 10.3.1950 and 29.3.1950 and on the 6.4.1950 judgment was given by this Court (read by the Chief Justice), dismissing your petitioners' appeal aforesaid subject to certain alterations in the wording of the injunction with costs for two advocates.

6. Your petitioners crave leave to refer to the said action of the Plaintiffs, to the pleadings in the case (i.e. Statement of Claim, Defence and Reply) to the evidence taken at the hearing thereof, and to the exhibits that are admissible in evidence, and to the judgment of the District Court of Nicosia dated 6.11.1948 and to the aforesaid judgment of this Court on appeal dated 6.4.1950 and generally to all other proceedings
50 in the said action.

*In the
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Court of
Cyprus.*

No. 39.

Applica-
tion of
Defendants
for leave to
appeal to
His Majesty
in Council,
22nd April
1950,
continued.

7. Your petitioners feel themselves aggrieved by the said judgments of the District Court of Nicosia dated 6.11.1948, referred to in paragraph (4) hereof, and of this Honourable Court dated 6.4.1950 delivered on appeal referred to in paragraph (5) hereof and are desirous of appealing therefrom to His Majesty in His Privy Council.

8. The said judgment of the Supreme Court is a final judgment where the amount in dispute on appeal amounts to or is of the value of £300 Sterling and upwards and the appeal involves directly or indirectly a claim demand or question to or respecting property or a civil right amounting to or of the said value of £300 and upwards. 10

YOUR PETITIONERS therefore pray :—

1. That this Honourable Court will be pleased to grant to your Petitioners leave to appeal from the said judgment dated 6.4.1950, to His Majesty in His Privy Council.

2. That this Honourable Court will be pleased to direct that the execution of the aforesaid judgment of the District Court of Nicosia dated 6.11.1948 and the enforcement of the injunction granted thereby shall be suspended pending the appeal to His Majesty in Council.

3. That this Honourable Court will be pleased in case the said judgment is directed to be carried into execution or the injunction thereby granted is enforced, to direct that the Plaintiffs shall, before the execution thereof or the enforcement of the said injunction, enter into good and sufficient security to the satisfaction of this Honourable Court, for the due performance of such Order as His Majesty in Council may think fit to make thereon. 20

4. That this Honourable Court fix the kind and amount of the security and the period within which such security is to be furnished.

5. That this Honourable Court will fix the time or times within which your petitioners shall take the necessary steps for the purpose of procuring the preparation of the record for despatch to England and to give the necessary directions accordingly. 30

6. That the Honourable Court will make such further or other order in the said premises as may seem just.

And your petitioners will ever pray . . .

The Cyprus (Appeal to Privy Council) Order-in-Council, 1927, clauses 3, 5, 6, 7 *et seq.*

Dated the 22nd day of April, 1950.

(Sgd.) MICHEL M. HOURY,
Counsel for the Petitioners.

40

No. 40.

AFFIDAVIT of Petitioners.

*In the
Supreme
Court of
Cyprus.*

On this 22nd day of April, 1950, THRASSIVOULOS IOANNOU of Kakopetria, the Cashier of the Irrigation Division of Kakopetria, being duly sworn, makes oath and says as follows :—

No. 40.
Affidavit of
Petitioners
in support,
22nd April
1950.

10 1. I say that the statements of fact made in the Petition filed herein (and produced to me and marked (AB) on the 22nd April, 1950) for leave to appeal to His Majesty in His Privy Council against the judgment of this Honourable Court dated 6.4.1950 is true in substance and in fact.

2. The matter in dispute on the appeal in respect of which the said judgment was made is of the value of over £300.0.0.

Dated this 22nd day of April, 1950.

(Sgd.) THRASSIVOULOS IOANNOU.

Sworn and signed before me this 22nd day of April, 1950, in the Registry of the Supreme Court, Nicosia

(Sgd.) J. P. JOSEPHIDES,
Registrar Supreme Court.

No. 41.

20 **ORDER granting conditional leave to appeal to His Majesty in Council.**

No. 41.
Order
granting
conditional
leave to
appeal to
His Majesty
in Council,
13th May
1950.

Upon the petition of the above-named Defendants filed on the 22nd day of April, 1950, praying for leave to appeal to His Majesty in His Privy Council from the judgment of the Supreme Court pronounced herein on the 6th April, 1950, coming on to be heard before This Court, and upon hearing what was alleged by Mr. M. Houry and Mr. E. Tavernary, advocates for the petitioners, and Mr. J. C. Clerides and Mr. A. Indianos, advocates for the Plaintiffs-Respondents herein, THIS COURT DOTH GRANT the petitioners conditional leave to appeal from the said judgment to His Majesty in His Privy Council, subject to the following conditions :—

30 (A) That the petitioners shall give cash security in £500 to be lodged in Court within two months from the date hereof for the due prosecution of the appeal and for the payment of such costs as may become payable to the Respondents in the event of petitioners not obtaining an order granting them final leave to appeal, or of the appeal being dismissed for non-prosecution, or of His Majesty in Council ordering the Appellants to pay the Respondents' costs of the appeal (as the case may be);

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(B) That the petitioners shall take the necessary steps for the purpose of procuring the preparation of the record and the despatch thereof to England within four months from the date hereof.

No. 41.
Order
granting
conditional
leave to
appeal to
His Majesty
in Council,
13th May
1950,
continued.

AND THIS COURT DOTH FURTHER ORDER that the execution of the said judgment be not suspended and that Respondents do furnish security in £500 in the form of a bond, within two months from the date hereof, for the due performance of such Order as His Majesty in Council shall think fit to make.

Dated the 13th day of May, 1950.

(Sgd.) M. MELISSAS, 10
J.

No. 42.
Order
granting
final leave
to appeal to
His Majesty
in Council,
3rd August
1950.

No. 42.

ORDER granting final leave to appeal to His Majesty in Council.

Upon the application of the above-named Appellants for final leave to appeal to His Majesty in His Privy Council from the judgment of this Court dated the 6th April, 1950, coming on for hearing before this Court and upon hearing Mr. M. Houry Counsel for the Appellants, and Mr. J. C. Clerides Counsel for the Respondents THIS COURT being satisfied that the conditions contained in an order of this Court made on the 13th day of May, 1950, have been complied with DOTH GRANT 20
FINAL LEAVE TO APPEAL.

Given the 3rd day of August, 1950.

(Sgd.) G. C. GRIFFITH WILLIAMS,
Acting Chief Justice.

EXHIBITS.

Plaintiffs' Exhibits.

2 (A)—ENTRY IN FIELD BOOK.

(Turn of Mosque)

No. 2 (A).
Entry in
Field Book,
15th
August
1893.

Date 15th August, 1893. Whether whole property.....
 Previous possessor (User) : Registered in her deceased father's name Mulla Mehmed (27).

Present possessor (user) Mehmed Nafi son of Mulla Mehmed.
 Extent of land.....donums.....evleks.....

Category of Mulk : running water 30 minutes.

10 Kind of property : Mulk.

Reasons for issue of title deed :

Boundaries : 30 minutes running water every 22 days from the river Karkut of Troodos from the division called " The turn of mosque."

Value :

Payment in lieu of tithe :

General Taxation Register.....Assessed value.....

Title deed obtained : No. 1 of December, 1893, registered in the name of Mehmed Nafi.

20

2 (B)—ENTRY IN FIELD BOOK.

(Turn of Mosque)

No. 2 (B).
Entry in
Field Book,
15th
August
1893.

Date : 15th August, 1893. Whether whole property.....
 Previous possessor (User) : Registered in her deceased father Mulla Mehmed (27).

Present possessor (User) : Shefika Hanim daughter of Mulla Mehmed.
 Extent of Land.....donums.....evleks.....

Category of Mulk : Running water 30 minutes.

Kind of property : Mulk.

Reasons for issue of title deed :

30 30 minutes running water for every 22 days from the river Karkut of Troodos from the division called " The turn of Mosque."

Value :

Payment in lieu of tithe :

General taxation register.....Assessed value.....

Title deed obtained : No. 2 of December, 1893, registered in the name of Shefika Hanim.

Plaintiffs'
Exhibits.

2 (C)—ENTRY IN FIELD BOOK.

(Turn of Mosque)

No. 2 (C). Date : 15.8.1893. Whether whole property.....
Entry in Field Book, Previous possessor (User) : registered as his property in LRO (1892).
15th August 1893. Present ,, ,, Ahmed Shefki Eff. son of Selin Agha of Linou village.

Extent of land.....donums.....evleks.....

Category of Mulk : running water 45 minutes.

Kind of property : Mulk.

Reasons for issue of title deed :

10

Boundaries :—

45 minutes running water every 22 days from the river Karkout of Troodos from the division called " The turn of Mosque."

Payment in lieu of tithe :

General Taxation Register.....Assessed value.....

Title deed obtained : No. 7 of April, 1892, registered in his name.

No. 3 (A).
Entry in Land Register,
3rd January 1896.

3 (A)—ENTRY IN LAND REGISTER.

Petra Registration. No. 2512

3.1.1896

20

30 minutes water.

Reasons for grant of title : Inheritance.

No. 1/1893 in the name of Mehmed Nafi Mulla Mehmet.

Boundaries : Running through Karkod River on every 22 days from the Mosque Division.

No. 3 (B).
Entry in Land Register,
9th February 1894.

3 (B)—ENTRY IN LAND REGISTER.

Petra Registration. No. 2513

9.2.1894

30 minutes water.

Reason for grant of title : Exchange No. 2 K. ev. 1893 in the name of 30 Shefika Hanim.

Boundaries : Running through the Karkod river on every 22 days from the Djami nevbeti.

3 (C)—ENTRY IN LAND REGISTER.

Petra Registration. No. 2514
 45 minutes running water. 9.8.1899
 Reason for grant of title : Exchange No. 71, Nisan (April) 1892 in his name.
 Boundaries : Running through the Karkod river on every 22 days from
 the Mosque Division.

Plaintiffs'
Exhibits.
 No. 3 (C).
 Entry in
 Land
 Register,
 9th August
 1899.

No. 4—INSTRUCTIONS to Yusuf Zia.

636/93.

10 Yusuf Zia Eff.,

With reference to the registration of Water at Flasso, Linou, Katydata, the Main Supply of water that irrigates the land of these villages is drawn from a river that supplies the following villages :—

	Kakopetria	Flasso
	Galata	Linou
	Sina Oros	Katydata
	Kaliana	Ay. Gorgi
	Tembria	Petra
	Korakou	Elia
20	Evrykhon	Kalokhorio
	Agrolado	Peristeronari
	Ay. Bifan	Pendayia

No. 4.
 Instruc-
 tions to
 Yusuf Zia,
 11th
 August
 1893.

An inhabitant of one of these villages gave us a rough statement as to how the water is divided amongst these villages the following :—

	<i>Day</i>	<i>Village</i>	<i>Hours per diem</i>	<i>Hours per night</i>
	Monday	Evrykhon, } Tembria, } A. Bifan }	12	—
30	do.	Petra		12
	Tuesday	Linou	12	
	do.	Elia		12
	Wednesday	Upper villages		
	&			
	Thursday	Flasso surplus	24	
	do.	Petra		24
	Friday	Tembria, Evrykhon, Flaso, Linou	12	
40	do.	Elia		12
	Saturday	Evrykhon Tembria, Ay. Yorgi	12	12

Plaintiffs'
Exhibits.

No. 4.

Instruc-
tions to
Yusuf Zia,
11th

August
1893,
continued.

As an example of how this water has been registered the village Linou which appears to enjoy 12 hours on Tuesday and a few hours on Friday has had water rights to the extent of 81 hours on Tuesday registered in it.

The first 8 villages were registered in Capt. Grant's time and in none of them have any separate registrations of water been made, only a note is made on the back of the registration of the land irrigated.

The instructions on this point run as follows :—

All irrigated lands should be noted as such in the column of remarks, naming the source of water from which irrigated and the No. of hours per week etc. 10

With the exception of river water which is sold and purchased together with the land under definition of "Hak Shirb" all water flowing from sources and running through wells shall be registered for issue of separate title deeds.

From these it would appear that the Presidents in Capt. Grant's time acted in accordance with their instructions and that you did not do so in registering the water at Flasso, Linou, Katydata water except that flowing from sources and running through wells is not to be shown separately but as stated in the Instructions a note should be made that the land is "Hak Shirb." 20

Please make a list of water other than that flowing from sources and running through wells entered separately in the Field Books of Flasso, Linou, Katydata and explain why you did not follow your instructions.

(Sgd.) ARTHUR H. YOUNG,

Director of Surveys.

11.8.93.

No. 5—REPORT and Reference of Salim Effendi.

No. 5.
Report and
Reference
of Salim
Effendi,
13th
August
1901.

L.E.164

1900

Registrar General,

30

In compliance with your instructions respecting the enquiries to be made to the taxims (divisions) etc. of the running water of Petra described in papers L.E.164/900 I have the honour to report that when I was at Petra Village I have 1st drew up a sketch shewing the River of Atsas, all the channels and all of the lands irrigated by the running water of Petra which runs through Karioti River, and the enquiries made by me into the different divisions of the said water are described as follows :—

(A) The 5 hours of water which is called Kerkindji Souyou (the overflow at the dam augmented as it follows its course by Springs in the River) is registered under numbers 1, 2, 3, 4, 5, and 6 the 2½ hours of which is from the Hafta Bashi of Ali Dayi (division of Ali Dayi) and 2½ hours from the Hafta Bashi of Choli (division of Choli). 40

(B) With the exception of the aforesaid water the people of Petra, as it will be observed from the annexed sketch marked B take whole of the River water in other divisions from the channel called Selloshi and Marked (19) from the channel called Kousouliadi and marked (17), from the channel of Linou marked (26 & 27) and from the sluice of the channel of Katidhata marked (25), but this particular water is taken from a dam called Beylik Ishasi marked (28) and situated in the centre of a village known as Ayios Yeorghios which is in a distance from Petra of about $\frac{3}{4}$ of a mile, and each division is considered to take the place of the main water of about $2\frac{1}{2}$ hours till the main water reaches from Selloshi or Kousouli channels to Petra village which channels are about $4\frac{1}{2}$ mile far from Petra.

(C) There are 6 divisions of $12\frac{1}{2}$ hours each in every 22 days, one of 23 hours, and one of $28\frac{1}{2}$ hours in every 15 days on Wednesday night (Tuesday night) and 2 of $2\frac{1}{2}$ hours each in every 22 days on Sunday night (Saturday night) belonging to Petra people.

(D) As each of these 2 divisions of $2\frac{1}{2}$ hours each described in paragraph A & C joins with one of the 6 divisions of $12\frac{1}{2}$ hours in every 22 days on Saturday night both i.e. the division of $12\frac{1}{2}$ hours and the division of $2\frac{1}{2}$ hours is considered to be one division of 15 hours in every 22 days on Saturday nights, but as the divisions have got separate names the new registration clerk deemed necessary to register it separately and described to be out of 15 hours. I was informed that the owners of these 6 divisions of $12\frac{1}{2}$ hours each do not continue to take their water every year on the same day, but change every year; if for instance the owners of the divisions of Mulla Mustafa and Djami take their water this year together with those of 2 Keskindji Soyou of $2\frac{1}{2}$ hours each on Saturday nights in every 22 days the following year the owners of the divisions of Ahmed Agha and Ayan take that day together with that of Kezkindji Soyou and the 3rd year the owners of Dianara and Louka do the same.

With regards the divisions called Musulman and Ouroum Salisi (Moslem and Greek Tuesdays) the owners of these 2 divisions take their water from the same place at a certain time and hand over at the same place and at the same time in every 15 days, but the term of Moslem Tuesday considered to be 23 hours and so is divided into 23 hours and the turn of Greek Tuesday considered to be $28\frac{1}{2}$ hours and so is divided into $28\frac{1}{2}$ hours. The explanation of these divisions is given in the reference of the attached sketch of Karioti river, and the details of the divisions is given in the annexed statement. The owners of Petra chiflik take one of the chiflik divisions on Saturday night in every 22 days, this division was originally $12\frac{1}{2}$ hours, but as the water called Keskindji Soyou of $2\frac{1}{2}$ hours in every 22 days is mixed up together with that of $12\frac{1}{2}$ hours it was registered in the new registration as 15 hours of water in the names of the chiflik owners.

The chiflik takes the 2nd division of the water on Sunday night of $12\frac{1}{2}$ hours in every 22 days, the 3rd division on Wednesday night of $12\frac{1}{2}$ hours in every 22 days and also takes a chappa of water in every Thursday night from the water runs to Elæa (a chappa of water is considered to be so much as will irrigate $1\frac{1}{2}$ dons of land during the time that the water runs to Elæa village).

Plaintiffs'
Exhibits.

No. 5.
Report and
Reference
of Salim
Effendi,
13th
August
1901,
continued.

I found out that the Petra water was, never assessed for Verghi but the lands irrigated by it were assessed at a higher rate than those which are not irrigated with this water. (The different rates of different classes of lands which are irrigated and not irrigated are shewn in the attached list.)

I beg to state that there are some lands which were left without water and some water left without lands, take for instance Hindi Eff. Mulla Mustafa of Petra, this man had 6 hours of water in every 22 days from the division of Mulla Mustafa, 1 hour in every 22 days from the division of Dianara, and $2\frac{1}{2}$ hours in every 15 days from the division of Moslem Tuesday all of which amounts to $9\frac{1}{2}$ hours of water, out of this water he sold 4 hours in every 22 days from the division of Mulla Mustafa to certain Yani Yorghy in January 1886 who died and left one hour of the said water to his son Pavlo Yani Kalloura under register 27/2516, one hour to Dimitri Yani Kalloura under register 28/2517 one hour to Michaili Yani Kalloura under register 29/2518 and one hour to Haralambo Yani Kalloura under register 30/2519 who have also lands which can be irrigated by this water (See No. 27, 28, 29 and 30 in the statement prepared for the water and lands). The Statement attached hereto and the remaining 2 hours in every 22 days from the division of Mulla Mustafa one hour in every 22 days from the division of Dianara and $2\frac{1}{2}$ hours in every 15 days from the division of Moslem Tuesday was sold by auction to certain H. Mehmed Eff. Hussein Bektash of Nicosia under register 2568, 2569 and 2570 (See S.P.492) who has no lands or any other property there at Petra except these $5\frac{1}{2}$ hours of water. 10

I have observed from the Verghi Houlassa that who ever could managed to get a title-deed for his water a fresh value used to be assessed for the same from Zouhour as it may be observed from the Verghi Houlassa of Petra P.48, that when Hindi Eff. Mulla Mustafa has got his $9\frac{1}{2}$ hours of water registered in his name by the strength of a Village Certificate in February 1883 under register 311, 312 and 313 a value of 17187 $\frac{1}{2}$ c.p. has been assessed from Zouhour (See Verghi P.48) and when he sold 4 hours to Yani Yorghy in January 1886 under register 20 the value of 7250 prs. has been carried into the name of Yani Yorghy (See Verghi P.28) and when the remaining $5\frac{1}{2}$ hours was sold by auction to H. Mehmed Eff. Hussein Bektash of Nicosia in June 1894 under register 2568, 2569 and 2570 (See S.P.492) the remaining value of 9937 $\frac{1}{2}$ c.p. has been carried off from the name of Hindi Eff. and brought only the sum of 7020 into the name of Haji Mehmed Eff. of Nicosia (See V.P.155), consequently the lands of Hindi Eff. Mulla Mustafa under 17/56, 15/35, 16/42, 17/81, 17/82, 17/98 and 7/82 were left without water. 30

Certain Marikkou Christofi Kouyoumdji who has one hour of water in every 22 days called Kiskindji Souyou from the division of Ali Dayi had also 2 dons and 1 evlek of land under 7/19 (See Tapou p. 248) and sold it to Sava Yani Chantas under register 3234 (See T.P.219) and the assessed value of 3375 has been carried off from the name of Marikkou Christofi Kouyoumdji (See V.P.137) into the name of Sava Yani Chantas (See V.P.119.)

As the said Sava has no water to irrigate his lands, the land he purchased from Marikkou Christofi is left without water, and as the said 50

Marikkou Christofi has own no other land her water under register 3 is left without land.

Plaintiffs' Exhibits.

I beg to state that the Taxims are not built channels, and that there is no such persons who is registered for water is not registered for any land.

No. 5.
Report and
Reference
of Salim
Effendi,
13th
August
1901,
continued.

10 Although the water of Petra has not been, separately assessed for Verghi during the Tahrir Emlak it is perfectly clear that the value of the water is assessed with the lands which can be irrigated by this water, but notwithstanding to that the Muhtar and the commission of Petra gave a village certificate on behalf of the villagers of Petra declaring that the water running to their village of Petra has never been assessed for Verghi and they agree that the value described in the attached V. Certificate may be assessed on every hour of water.

They gave this V. Certificate for the anticipation that the water might be registered in the names of the present holders as Mulk so as to enable them to deal with as they like.

I prepared 148 forms shewing the present possessors of the water of Petra and enclosed herewith.

13, August, 1901.

(Sgd.) M. SALIM.

Reference.

20 No. 1 Represent the dam of the channel called Frandjiko through which the people of Kakopetria take their water every day except Tuesday. They take their water from the Karioti river and convey it through the aforesaid channel by blocking up the river with brushwood and stone so much as the channel could carry.

The people of Kakopetria take their water on Saturday, Sunday, Monday, Wednesday and Thursday from the appearance, in their village of Pleiades till the sun rise, 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 14 June to 14 August, and from the 15 August to the 13 June of the following year they commence to take their water from the appearance of Orion's belt instead of Pleiades.

No. 2 represents the dam from which the people of Kakopetria take water from Karidi River and convey through the channel called Pera Horio when the time comes to take their water they block up the river with brushwood and stone, the overflow of this dam goes to the channel called Bfkari No. 3 and the water overflowing from this dam No. 3 goes down to the river.

40 These channels No. 2 and 3 take their water exactly the same time as the channel No. 1.

No. 4 represents the dam of the channel called Aplitch of Ayios Nicolaos which takes the water exactly the same time as the above mentioned channels.

No. 5 represents the dam of the channel called Kapatthoka of Galata village.

No. 6 represents the dam of the channel called Vassiliko of Galata Village.

Plaintiffs'
Exhibits.

No. 7 represents the dam of the channel called Ganoz of Galata village.

No. 5.
Report and
Reference
of Salim
Effendi,
13th
August
1901,
continued.

No. 8 represents the dam of the channel called Makri of Galata village. These four channels of Galata also take their water at the exact time as the channels under No. 1, 2, 3 and 4 take.

No. 9 represents the dam of the channel called Sina Oros channel of Sina Oros Village which takes its water at the exact time as the aforesaid channels take.

No. 10 represents the dam of the channel called Mirasha through which the water of Evrikhou, Tembria and Korakou runs and at the 10 spot No. 11 the water is divided into two, one half goes to Evrikhou and the other half goes to Tembria and Korakou villages.

No. 12 represents the dam of the channel of Evrikhou.

No. 13 represents the sluice on Evrikhou channel from which the water of Petra and Elæa is taken.

No. 14 represents the spot where the water is divided and 1/3 goes to Tembria and 2/3 goes to Korakou villages.

The people of Evrikhou, Tembria and Kourakou take their water in the following days. The people of Kourakou take on Sunday, Monday, Wednesday, Thursday and Friday and on Tuesday and Saturday they do 20 not take.

The people of Evrikhou, Tembria and Kourakou turn the water in their channel by blocking up the sluices of Petra and Elæa at the appearance of Pleiades, and as the channels No. 1, 2, 3, 4, 5, 6, 7, 8 and 9 take the main water at the same time, the channel of Mirasha No. 10 takes only the overflow water from the above 9 dams up to the sun rise and at the sun rise the dams of the aforesaid 9 channels are opened and let the whole of the main water run down to Mirasha channel No. 10 through which the people of Evrikhou, Tembria and Kourakou are supplied with water up to the time when the shadow in the afternoon of a standing 30 man falls before him 7 feet from the spot standing to his head.

On the said time the water guards of Petra and Elæa open the sluices No. 13 and turn the water of Evrikhou channel into the river, and block up the dam No. 14 of Tembria channel and let the water to Kourakou channel and open the sluice No. 15 of Kourakou channel and let also the water of Tembria and Kourakou into the river.

The 2 water of the 2 sluices No. 13 and 15 unite and run to Petra village through channels the names of which will be given further down.

The people of Tembria take their water every day, but in addition to their water on every Friday afternoon when the shadow of a standing 40 man fall before him 7 Feet from the spot standing up to the shadow of his head then the water of Kourakou is also taken by the people of Tembria until Saturday afternoon at 7 feet of the shadow i.e. up to the time when the people of Petra take the water.

The people of Evrikhou take their water every day except Tuesday they stop only taking water on Tuesday morning at the appearance of Pleiades up to Wednesday morning at the appearance of Pleiades (i.e. 24 hours).

No. 16 represents Agrollado channel, this channel takes the half of the river water overflow from the dam of Evrikhou on every eight days from the appearance of the star under Pleiades on Monday morning until the shadow of the mountain on the west of the river, reaches up to the channel called Kousouliadi No. 17, and the other half of the river water is taken by the people of Ayios Epiphantos at the same time and by the following courses, that the water will 1st be put into Kousouliadi channel No. 17 and let into the river from the dam No. 17a and from the river is put into the channel of Ayios Epiphantos No. 20 and they irrigate their
 10 lands etc. from the appearance of the star under Pleiades on Monday morning up to the time when the shadow of the mountain reaches to a certain Kokino Rotso (Red Rock), and then the water guards of Elæa take the water from both places to Elæa village.

No. 17 represent Kousouliadi channel, from this channel the water runs one week for 3 days and the other week for 4 days and out of these 7 days 2 days i.e. on every Monday the water runs to Ayios Epiphantos and 5 days runs to Kourrou Vlassou (Pano Vlassou).

The people of the said Pano Vlassou take their water from the channel No. 17. One week on Wednesday and Thursday and the other week on
 20 Wednesday, Thursday and Friday, but on every 15 days out of the Friday water a chappa of water is taken and supplied to the channel called Razka No. 18.

The people of Pano Vlassou take their water in the aforesaid days from the appearance of the Star under Pleiades up to the shadow, in the afternoon, of a standing man fall before him 18 feet from the spot standing up to the shadow of his head, but as the main water of Petra and Elæa is taken from the sluices of Evrikhou, Tembria and Kourakou at 7 feet shadow p.m. It reaches to the sluice No. 17a of the channel of Kousouliadi at 12 feet shadow p.m. and in consequence of that the water guards of
 30 Petra and Elæa erect a mark into Kousouliadi channel and let the main water which is taken from Evrikhou, Tembria and Kourakou sluices run to Petra and Elæa until the shadow reaches to 18 feet and when it reaches to 18 feet p.m. the whole of the water running to Pano Vlassou is turned down to Petra and Elæa.

No. 18 represents the channel called Razia which is supplied a chappa of water on Friday in every 15 days out of the water of Pano Vlassou.

No. 19 represents the channel called Sellosi; the overflow water which runs through this channel is taken by the people of Vlassou from a spot called Kremisdira in every 8 days on Wednesday and Thursday.

They take this water from the appearance of the Star under of
 40 Pleiades up to the time when the water is turned to Petra and Elæa channels, but in every 15 days on Friday which is called (complete Friday) when the overflow water is taken from the dam of Evrikhou by the people of Vlassou village a chappa of water is given to Ayios Epiphantos village and the next Friday i.e. in every 15 days when the people of Pano Vlassou village take the overflow water from Kousouliadi channel at the appearance of the Star of Pleiades at the same time the people of Ayios Epiphantos take what water they find at Sellosi channel and the people of Vlassou take what water they find at the spot called Kremisdira.

50 When the shadow of a standing man fall before him 18 feet p.m. the people of Ayios Georghios come and take the water, of complete

Plaintiffs' Exhibits.

No. 5.
 Report and Reference of Salim Effendi, 13th August 1901,
continued.

Plaintiffs' Exhibits.
 No. 5.
 Report and Reference of Salim Effendi, 13th August 1901, continued.

Friday from Selloshi channel, a chappa of which was running to Ayios Epiphanius and the rest to Vlassou villages and the following Friday the same villagers come at the same time and take the water from Kousouliadi channel to their village. As it was already stated above, that the people of Ayios Georghios take the water from the channels of Kousouliadi and Selloshi from the shadow at 18 feet p.m. on both Fridays, the water continue to run until the sun set on Saturday. On Saturday when the water guards of Petra turn the main water into the river from the sluices of Evrikhou Tembria and Kourakou for the purpose of taking it to Petra village they go to Ayios Yeorghios village and turn the water which was running since Friday to that village into the channel of Petra by the sun set from a place called Beylik ishasi. 10

This with the main water runs to Petra village till the appearance of the Star of Pleiades on Sunday morning and as soon as the star of Pleiades appears the whole of the water is taken the sluices of Barri and Ayios Epiphanius, and at the same moment the man who is standing at the dam of Selloshi divides $\frac{2}{3}$ of the water towards the channel of Ayios Epiphanius and $\frac{1}{3}$ is taken to Barri through the Selloshi channel and the people of Ayios Epiphanius and the owners of Barri channel make use of this water till the sunrise on Sunday, and at the sun rise the water of Barri is also taken to Ayios Epiphanius. (Now there is a dispute between the people of Petra and Ayios Epiphanius of which there is a case in Court.) The people of Petra say that, when the water guards of Petra take the main water from the sluices of Evrikhou and Kourakou on Sunday at 7 feet shadow p.m. and when it reaches to Selloshi channel they erect a mark to the sluice of Selloshi channel and let the same quantity of water run to Ayios Epiphanius as it used to run since the sun rise until the shadow of the mountain comes on the Kokino Rotso, and when the shadow comes on the Kokino Rotso the water guards of Petra also take that water from the sluice of Ayios Epiphanius channel and leads the water through the channel called Asbourolla No. 21 and joins with the water running through Selloshi channel and takes it to Petra village. But the people of Ayios Epiphanius say that when the main water is taken from the sluices of Evrikhou and Kourakou on Sunday at 7 feet p.m. by the water guards of Petra and when it reaches to Selloshi channel $\frac{2}{3}$ should be divided to Ayios Epiphanius channel and $\frac{1}{3}$ to Selloshi channel and thus take water to Petra village. The Petra people have the right to take this water until the appearance of the Star of Pleiades on Monday morning and on that time as it was already stated in No. 16 the half of this water is taken by the people of Ayios Epiphanius and the other half is taken by the people of Agrollado, and the people of Agrollado take this water until the shadow of the mountain comes to the channel of Kousoulia, and the people of Ayios Epiphanius take their water until the shadow of the mountain comes to Kokino Rotso. 30 40

On the same day i.e. on Monday afternoon when the shadow of a standing man falls before him 7 feet the people of Elæa take their water from the sluices of Evrikhou and Kourakou, and before it reaches to the channel of Agrollado the water guards of Elæa erect a mark to the dam of Agrollado and let about the same quantity of water run as it was running since morning until the shadow of the mountain comes to Kousouliadi channel and when the shadow comes to Kousouliadi channel whole of the water of Agrollado channel is taken to the river and from the river 50

to Selloshi channel, and when the water reaches to Selloshi channel, 2/3 is divided to Selloshi channel and 1/3 is divided to Ayios Epiphanius channel and the people of Ayios Epiphanius take this water until the shadow of the mountain comes on the Kokino Rotso, and when the shadow comes on Kokino Rotso the water guards of Elæa take both of the water running to Ayios Epiphanius and the water runs through Selloshi channel to Elæa village and the people of Elæa use this water until the sun rise on Tuesday morning. On Tuesday morning by the sun rise the people of Linou take their right in the water from a place called Molo Mill No. 21a.

Plaintiffs' Exhibits.

No. 5.
Report and Reference of Salim Effendi, 13th August 1901, *continued.*

- 10 On every Tuesday morning at the appearance of Pleiades out of the whole of the water running from Troodos the people of Tembria have the right to take a shovel of water which is called Rokhto (a shovel means that when a channel is wide open they stand the iron shovel in the centre of the water and when the water reaches to the top part of the shovel then the water running in that channel is called a shovel or a Rokhto of water) and the rest of the whole of water runs down and pass through Selloshi and Asbourolla channels and at the spot near the mill of Shaban Bey No. 19a the water of both channels unite together and the whole water run to the aqueduct of Molo Mill. On the aqueduct of Molo Mill when
20 the water reaches to a spot where there is a specially mark built it is divided into two parts one part goes to Katidhata village and the other part goes to Linou village, and this water runs in both of these villages on Tuesday up to the sun set and at the sun set the people of Petra take the water from the sluice of Katidhata No. 25 and at the same time they take also the water from Linou channel.

- The water from Linou channel is taken on Tuesday from a place called Bidkavli ishasi, near the threshing floors of Linou No. 26 and the other Tuesday from a place called Balioklisha No. 27 and carry the water from both channels to Petra village. (The water of these 2 Tuesdays
30 (Tuesday nights) i.e. one Moslem and one Greek Tuesdays are taken from the same place at the same time and handed over from the same place at the same time, but the Moslem Tuesday is reckoned to be 23 hours and the Greek Tuesday 28½ hours.) This water runs to Petra until the appearance of the star of Pleiades on Wednesday morning and at the appearance of the said star the people of Kourou Vlassou (Pano Vlassou) turn the water to Kousoulia Channel and take it to their village up to the time when Petra people have got the right to take it to Petra.

- On Wednesday at 7 feet shadow p.m. the water guards of Petra take the main water from the sluices of Evrikhou and Kourakou channels
40 and when it reaches the Kousouliadi channel they erect a mark in the dam of that channel and let the same quantity of water run to Kourou Vlassou until the shadow of a standing man will reach to 18 feet p.m., then the Petra people take that water also from Kousouliadi channel and leads it through Selloshi and Asbourolla channels to Petra village.

- This water is taken by the people of Petra from Wednesday evening until Thursday morning up to the appearance of Pleiades and at the said time the people at Evrikhou and Kourakou take the main water through their channel to their own village and the overflow from these 2 dams is taken by Kousouliadi channel to Kouro Vlassou and the overflow of
50 Kousouliadi channel is taken to Vlassou village through the channel of Selloshi.

Plaintiffs' Exhibits.

No. 5.
Report and Reference of Salim Effendi, 13th August 1901, continued.

On Thursday the water guards of Elæa take the main water from Evrikhou and Kourakou channels 7 feet shadow p.m. as well as the water of Kousouliadi at 18 feet shadow p.m. and the water of Ayios Epiphanios, which was running through Selloschi channel, is also taken by Elæa people at the time when the shadow of the mountain strikes on Kokino Rotso, but before this water reaches to Elæa village a chappa of water is given to the owners of Petra chiflik (without any labour) and then the rest is taken to Elæa village. (A chappa of water is reckoned to be so much as could irrigate $1\frac{1}{2}$ donums of land during the time that the water runs to Elæa village.)

10

No. 23 represents the channel known as Konarka, this channel has the right to take the overflow water of Ayios Epiphanios dam on every Sunday morning from the day light up to the time when the main water from Evrikhou and Kourakou dams is taken by the people of Petra at 7 feet shadow p.m. and when it approaches near the channel called Konarkadi No. 23 the water of that channel also is taken together with the main water down to Petra village.

No. 28 represents the channel called Beyilik ishasi, situated in the centre of Ayios Georghios village, as the people of Petra take their water, which is an overflow from the dams of Evrikhou and Kourakou, on every Saturday by the sun set from this channel No. 28, it is considered to take the place of the main water for $2\frac{1}{2}$ hours until the main water, which is taken on the same day from the dams of Evrikhou and Kourakou channels at 7 feet shadow p.m. reaches to the village of Petra and thus the said $2\frac{1}{2}$ hours of water was called Kezkindji Souyou.

As the said $2\frac{1}{2}$ hours of this overflow water is mixed up on every Saturday with the main water of $12\frac{1}{2}$ hours which is taken from Evrikhou and Kourakou dams, the said $2\frac{1}{2}$ hours of overflow water is considered to be out of 15 hours of water.

(Sgd.) M. SELIM. 30

10th August 1901.

7 (A)—ENTRY IN LAND REGISTER.

Petra Registration No. 8436 dated 24.12.1929.

No. 7 (A).
Entry in Land Register, 24th December 1929.

By purchase. M.S.3513/29.

Running water 30 minutes in every 22 days.

Boundaries : Running through Karkot river having its source from the Spring on Troodos.

7 (B)—ENTRY IN LAND REGISTER.

Petra Registration No. 8071 dated 28.5.1926.

No. 7 (B).
Entry in Land Register, 28th May 1926.

Running water. 1 hr. on every 22 days.

Reason for grant of title : Purchase.

Boundaries : Running through the Karkod river having its source from the Spring on Troodos.

40

7 (C)—ENTRY IN LAND REGISTER.*Plaintiffs' Exhibits.*

Petra Registration. No. 8211 dated 6.7.1927.

Running water. 2/3 shares.

Reason for grant of title : By Purchase.

Boundaries : Running through the Carli Dagh. Karkot river on every 22 days.

No. 7 (C).
Entry in
Land
Register,
6th July
1927.**7 (D)—ENTRY IN LAND REGISTER.**No. 7 (D).
Entry in
Land
Register,
30th
November
1917.

Petra Registration. No. 7226 dated 30.11.1917.

10 Running water. One hour on every 15 days on Tuesday night, 76/256 share.

Reason for grant of title : By purchase.

Boundaries : Running from Karkot river of Troodos.

7 (E)—ENTRY IN LAND REGISTER.No. 7 (E).
Entry in
Land
Register,
28th
November
1931.

Petra Registration. No. 8648 dated 28.11.1931.

Running water. 30 minutes on every 22 days.

By purchase M/S 3370/31.

Boundaries : Running through Karkot River of Troodos.

Plaintiffs'
Exhibits.

No. 8 (1).
Certificate
of Land
Registra-
tion, 6th
March 1940.

8 (1)—CERTIFICATE OF LAND REGISTRATION.

LAND REGISTRY OFFICE, CYPRUS.

Certificate of Registration of Immovable Property.

Number of Registration 9524.

PARTICULARS OF THE PROPERTY.

Nahieh : Lefka. Town or Village : Petra.

Locality : Tzami Neheti. Block : Holding 13.

Nature of Property and Quantity : Running water called (Nefeti Division)
30 minutes in every 22 days.

Boundaries : Running through Karkotis river from Troodos. 10

Category of (1) Property : Mulk.

Transferred from Theotokis Michael Zempila, page 1045.

To Ariadni A. Papa Georghiou.

Reason for Grant of Title—Purchase D/S 258/40.

Previous Registration 8368.

Sale Price 1440p. Assessed Value 1000p. Assmt. Register Page 44.
(One thousand)

	p.	
Transfer	14	
Registration	6	20
	—	
Total	20	

Registered at Nicosia
the 6th day of March, 1940.

(Sgd.) Illegible.

For Principal Officer of
Land Registration.

8 (2)—CERTIFICATE OF LAND REGISTRATION.

LAND REGISTRY OFFICE, CYPRUS.

Certificate of Registration of Immovable Property.

Number of Registration 8071.

Plaintiffs'
*Exhibits.*No. 8 (2).
Certificate
of Land
Registration,
28th
May 1926.

PARTICULARS OF THE PROPERTY.

Nahieh : Lefka. Town or Village : Petra.

Locality : Yanico Turn.

Nature of Property : Running Water.

Area or Quantity : One hour on every twenty-two days.

10 Boundaries : Running through Karkot River having its source from the
spring on Troodos.

Category of (1) Property : Mulk.

Transferred from Yeorghi Hj Lavithi.

To Michael Serafim.

Reason for Grant of Title : Purchase D.S. No. 1191/26.

Previous Registration 7758.

Sale Price 3150 p. Assessed Value 900p. Assmt. Register Umum Zahur.

Commuted Succession Due (Sec. 28, Law 12, 1907) per annum
piastres 5 paras :

20 Annual payment Sec. 10 Law 9, 1908 per annum.

	P.
Transfer	32
Registration	6
	—
Total	38

Registered at Nicosia
the 28 day of May, 1926.(Sgd.) A. SOFOCLIS,
for Principal Officer of Land
Registration.

Plaintiffs'
Exhibits.

8 (3)—CERTIFICATE OF LAND REGISTRATION.

LAND REGISTRY OFFICE, CYPRUS.

Certificate of Registration of Immovable Property.

Number of Registration 8211.

No. 8 (3).
Certificate
of Land
Registra-
tion, 6th
July, 1927.

PARTICULARS OF THE PROPERTY.

Nahieh : Lefka. Town or Village : Petra.

Locality : Mulla Mustafa's Nevbet Holding 36.

Nature of Property : Running water.

Area : One hour $\frac{2}{3}$ shares.Boundaries : Running through from Karli Dagh Karkot River on every 10
twenty-two days,

Category of Property : Mulk.

Transferred from Chrisanthos K. Kiullos of Galata.

To Nicolas Ch. Kamenos.

Reason for grant of Title : By purchase No. D.S.1428/27.

Previous Registration 6165.

Sale Price 2160p. Assessed Value 600p. Khulasa Page 2147.

	P.	
Transfer	22	
Registration	6	20
	—	
Total	28	

Registered at Nicosia
the 6th day of July, 1927.

(Sgd.) A. SOFOCLIS,
Principal Officer of Land
Registration.

8 (4)—CERTIFICATE OF LAND REGISTRATION.

LAND REGISTRY OFFICE, CYPRUS.

Certificate of Registration of Immovable Property.

Number of Registration 7226.

PARTICULARS OF THE PROPERTY.

Nahieh : Lefka. Town or Village : Petra.

Locality : Ouroum Soliou. Holding 74.

Nature of Property : Running water 76/256 shares.

Area : One Hour on every fifteen days on Tuesday night.

10 Boundaries : Running from Karkot River of Troodos.

Category of (1) Property : Mulk (2) Ground : Mulk.

Transferred from Zurie Ali Eff.

To Argyros Ttofi, Papa Yeorghy Tofi, Ioanni Argyrou.

Reason for grant of Title : By purchase No. D.S.1405/17.

Previous Registration 7054.

Sale price 360p. Assessed Value 270p. Khulasa Page 1938.

		p.
	Transfer	4
	Registration	6
		—
20	Total	10

Registered at Nicosia,
the 30 day of November, 1917.

(Sgd.) Illegible.

for Principal Officer of Land
Registration.*Plaintiffs'*
*Exhibits.*No. 8 (4).
Certificate
of Land
Registra-
tion, 30th
November
1917.

Plaintiffs'
Exhibits.

No. 8 (5).
Certificate
of Land
Registra-
tion, 28th
November
1931.

8 (5)—CERTIFICATE OF LAND REGISTRATION.

LAND REGISTRY OFFICE, CYPRUS.

Certificate of Registration of Immovable Property.

Number of Registration 8648.

PARTICULARS OF THE PROPERTY.

Nahieh : Lefka. Town or Village : Petra.

Locality : Ahmed Agha Nouri. Holding 129.

Nature of Property : Running Water.

Area : Thirty minutes of every twenty-two days.

Boundaries : Running through Karkodi River of Troodos. 10

Category of (1) Property : Mulk.

Transferred from Anastassis Constanti p. 559.

To Michael Sarafi.

Reason for grant of title : Purchase No. D.S.3370/31.

Previous Registration 8641.

Sale Price 1620p. Assessed Value 1000p.

Khulasa Page 667. Umum Law XII, 1907.

	p.	
Transfer	16	
Registration	6	20
	—	
Total	22	

Registered at Nicosia the
28th day of November, 1931.

(Sgd.) Illegible.

for Principal Officer of Land
Registration.

No. 8 (6)—CERTIFICATE OF LAND REGISTRATION.

LAND REGISTRY OFFICE, CYPRUS.

Certificate of Registration of Immovable Property.

Number of Registration 9160.

PARTICULARS OF THE PROPERTY.

Nahieh : Lefka. Town or Village : Petra.

Locality : Tjami Nebeti.

Nature of Property : Running water, One hour on every twenty-two days.

10 Boundaries : Running through the Karkoti river and called "Louka
Nebeti."

Category of (1) Property : Mulk (2) Ground : Ar. Mirie.

Transferred from Christos Michaelides T.P.630.

to Elli Chr. Michaelide T.P.1212.

Reason for Grant of Title : Gift from her father D.S.2963/37.

Previous Registration 7081.

Sale Price Gift. Assessed Value 2000p. Khulasa page 1282.

		p.
	Transfer	10
	Registration	6
		—
20	Total	16

Registered at Nicosia the
29th day of October, 1937.(Sgd.) Illegible.
for Principal Officer of Land
Registration.*Plaintiffs'*
*Exhibits.*No. 8 (6).
Certificate
of Land
Registra-
tion, 29th
October
1937.

Plaintiffs'
Exhibits.

No. 8 (7).
Certificate
of Land
Registra-
tion, 23rd
October
1925.

No. 8 (7)—CERTIFICATE OF LAND REGISTRATION.

LAND REGISTRY OFFICE, CYPRUS.

Certificate of Registration of Immovable Property.

Number of Registration 8019.

PARTICULARS OF THE PROPERTY.

Nahieh : Lefka. Town or Village : Petra.

Locality : Mousoulouman.

Nature of Property : Running water.

Area or Quantity : Two hours & thirty minutes on every fifteen days.

Boundaries : Running through Kasba river of Troodos from the 10
Mousoulouman Selisi division.

Category of (1) Property : Mulk (2) Ground : Mulk.

Transferred from 1/3 Neofido Joannou, 1/3 Tallou Joannou, 1/3 Theopisti,
Theodora, Kalliopi, Androniki, Domniki Yorghaki of Petra.

To Christos Hj Yanni.

Reason for grant of title : By Purchase at auction under J. 233/25.

Previous Registration 7150.

Sale Price 8370 cp. Assessed Value 2880 cp. Khulasa page 2124.

	P.	
Transfer	84	
Registration	6	
	—	
Total	90	

20

Registered at Nicosia the
23 day of October 1925.

(Sgd.) Illegible.

Principal Officer of Land
Registration.

No. 8 (8)—CERTIFICATE OF LAND REGISTRATION.

LAND REGISTRY OFFICE, CYPRUS.

Certificate of Registration of Immovable Property.

Number of Registration 8932.

PARTICULARS OF THE PROPERTY.

Nahieh : Lefka. Town or Village : Petra.

Locality : Nomi Roumliki.

Nature of Property and Quantity : thirty minutes every 15 days & nights
6/42 share.

10 Boundaries : Running through Karkoti river.

Category of (1) Property : Mulk (2) Ground : Ar. Mirie.

Transferred from Tallou Daniel T.P.1126.

To Papa Georghiou Bros. T.P.1163.

Reason for grant of Title : By purchase at auction J. 853/33.

Previous Registration 8777.

Sale Price 108p. Assessed Value 160p. Assmt. Register Page 1258.

	p.
Transfer	1
Registration	6
	—
20 Total	7

Registered at Nicosia the
30 day of December, 1935.

(Sgd.) Illegible.

for Principal Officer of Land
Registration.*Plaintiffs'*
*Exhibits.*No. 8 (8).
Certificate
of Land
Registra-
tion, 30th
December
1935.

Plaintiffs'
Exhibits.

No. 8 (9).
Certificate
of Land
Registra-
tion, 29th
October
1939.

No. 8 (9)—CERTIFICATE OF LAND REGISTRATION.

LAND REGISTRY OFFICE, CYPRUS.

Certificate of Registration of Immovable Property.

Number of Registration 9159.

PARTICULARS OF THE PROPERTY.

Nahieh : Lefka. Town or Village : Petra.

Locality : Tzami Nevatti. Holding 25.

Nature of Property and Quantity : Running water. One hour on every
twenty-two days.

Boundaries : Running from Karkotis River.

10

Category of (1) Property : Mulk (2) Ground : Mulk.

Transferred from Christos Michaelides T.P.630.

To Elli Chr. Michaelidou T.P.1212.

Reason for Grant of Title : Gift from her father 2963/37.

Previous Registration 7104.

Sale Price Gift. Assessed Value 2000p. Assmt. Register Page 1282.

	p.	
Transfer	10	
Registration	6	
	—	
Total	16	

20

Registered at Nicosia the
29th day of October, 1939.

(Sgd.) Illegible.

for Principal Officer of Land
Registration.

No. 8 (10)—CERTIFICATE OF LAND REGISTRATION.

LAND REGISTRY OFFICE, CYPRUS.

Certificate of Registration of Immovable Property.

Number of Registration 8436.

Plaintiffs'
*Exhibits.*No. 8 (10).
Certificate
of Land
Registra-
tion, 24th
December
1929.

PARTICULARS OF PROPERTY.

Nahieh : Lefka. Town or Village : Petra.

Locality : Tzami Nevbetti. Holding 7 & 8 plot 9.

Nature of property : Running water.

Area or Quantity : Thirty (30) minutes on every twenty-two days.

10 Boundaries : Running through Karkot river, having its source from the
spring on Troodos.

Category of (1) Property : Mulk.

Transferred from Yorghy Hj Lavithi p. 318

to Efrossini Christodoulou D.S.p. 632.

Reason for Grant of Title : By purchase 3513/929.

Previous Registration 7760.

Sale Price 720 cp. Assessed Value 1000 cp. Umum Law 907 Khulasa
p. 328 of 930.

	P.
20 Transfer	7
Registration	6
	—
Total	13

Registered at Nicosia the
24th day of December, 1929.(Sgd,) Illegible.
for Principal Officer of Land
Registration.

Plaintiffs'
Exhibits.

No. 8 (11).
Certificate
of Land
Registra-
tion, 21st
July 1930.

No. 8 (11)—CERTIFICATE OF LAND REGISTRATION.

LAND REGISTRY OFFICE, CYPRUS.

Certificate of Registration of Immovable Property.

Number of Registration 8557.

PARTICULARS OF THE PROPERTY.

Nahieh : Lefka. Town or Village : Petra.

Locality : Nomi Dridi Romeki.

Nature of Property : Running water.

Area or Quantity : One hour on every fifteen days & nights on Tuesday
night at turn of Dridi Romeki. 10

Boundaries : Running through Karkot River.

Category of (1) Property : Mulk.

Transferred from Theodossi Haralambo & Haralambo Panayi P.184.

To Theodossi Haralambo p. 356.

Reason for grant of Title : By exchange of title & division 3 years ago
see A 3035/29.

Previous Registration 7871.

Sale Price Assessed Value 2000 cp. Umum Law XII 907
Khulassa p. 1064.

	Cp.	
Registration	6	20
	—	
Total	6	

Registered at Nicosia,
the 21 day of July, 1930.

(Sgd.) Illegible.

for Principal Officer of Land
Registration.

No. 8 (12)—CERTIFICATE OF LAND REGISTRATION.

LAND REGISTRY OFFICE, CYPRUS.

Certificate of Registration of Immovable Property.

Number of Registration 5345.

Plaintiffs'
*Exhibits.*No. 8 (12).
Certificate
of Land
Registra-
tion, 4th
April 1906.

PARTICULARS OF THE PROPERTY.

Nahieh : Lefka.

Nature of Property : Running water 1/3 share.

Area or Quantity : One & half hour on every fifteen days on Tuesday night.

Boundaries : Running from Karkot River, called Ouroum Salisi Nevbet.

10 Category of (1) Property : Mulk.

Transferred from Mehmed Hassan

To Papa Yorghis Tofi p. 502.

Reason for grant of Title : By purchase under J.528/904.

Previous Registration 4737.

Sale Price 302 cp. Assessed Value 360 cp. Umum. Zuhur
Khulassa p. 1524.

	Cp.
Transfer	3
Registration	6
	—
20 Total	9

Registered at Nicosia,
the 4 day of April, 1906.

(Sgd.) Illegible.

Principal Officer of Land
Registration.

Defendants'
Exhibits.

No. 10—CERTIFICATE OF LAND REGISTRATION.

LAND REGISTRATION AND SURVEY DEPARTMENT.

Certificate of Registration of Immovable Property.

No. 10.
Certificate
of Land
Registra-
tion, 28th
September
1939.

District : Nicosia.

No. 3834.

Village : Kakopetria. Block 7/74 Sheet XXXVII

Plan 21 Village

Quarter

Plot 27/1, 12/1

Scale

Locality : Apliki.

Area : Don. Ev. Sq. ft.

10

Boundaries : Clearchos Themistoclis and another, plot 12, Cleanthis Haggi Nicola, plot 97, Athanassios and Andreas L. Louka, plot 96, Yannis Symeonides, plot 27/2, Chrystallou Alexandrou L. Papantoniou, plot 27/3, Ioannis Symeonides plot 27 and road.

Property : Hotel consisting of ground floor : 4 halls, 2 halls, 6 rooms, 1 store, 2 corridors, 2 water-closets, 1 bathroom, 2 attics, 1 kitchen, 1 cellar and upper floor : 1 hall, 9 rooms, 1 hall, 2 corridors, 2 W.C. 2 bath-rooms, 2 cellars and yard with one tank, well and trees with right of passage through plot 27.

Category of (1) Property : Mulk (2) Ground : Arazi Mirie.

20

Assessed Value (piastres) 95100 (Nine, five, one, zero, zero).

Previous Registration 3692-3283-3271.

THIS IS TO CERTIFY that the property described above stands recorded in the Land Register in the name of the person or persons mentioned below and/or overleaf to the extent of the share or interest shown against each name, and that such person or persons is or are entitled to hold and enjoy the said property to that extent, subject to the provisions of the law affecting the tenure of immovable property.

Person in whose name the property stands registered and his share or interest therein.

30

Serial No.	R.O. (N.133) Page	Share or Interest	Name and Residence	Reference File No.	Transferred to
	928	1/2	Athanassios L. Louka of Nicosia	A.1163/39	---
	929	1/2	Andreas L. Louka of Nicosia	A.1163/39	

Registered on the 28th September, 1939, by exchange of title and original registration.

Fees £0.5.1.

40

(Sgd.) G. ELEFThERIADES,
for Principal Land Registry Officer.

No. 11—IRRIGATION PERMIT FORM.

Defendants' Exhibits.

3867.

IRRIGATION DIVISION OF KAKOPETRIA.

No. 11. Irrigation Permit Form.

Mr.....

You are notified that the Irrigation Committee has made arrangements so that you may go to water your property at locality..... tomorrow/today.....following.....

Note :—If you neglect to go in time you will miss your turn.

10 Kakopetria.....19.....

The Secretary

The owner

.....

No. 12—CERTIFICATE OF LAND REGISTRATION.

No. 12. Certificate of Land Registration, 12th November 1925.

LAND REGISTRATION AND SURVEY DEPARTMENT.

Certificate of Registration of Immovable Property.

District : Nicosia.

No. 2922.

Village : Kakopetria.

Locality : Vaderi.

20 Boundaries : Coming to the surface from the spring having its source in the field belonging to the heirs of Panayotou Hj Kyriacou & bounded by Karkodi River, Successors of Haralambos Kyriacou, Gavrielis Kyriacou, Successors of Hj Savva Hj Michaeli, Road & Monopadi.

Property : Running water, the whole supply one wheelwell's spring water.

Easements.

Assessed Value (piastres) 2750 (Two, Seven, five, zero).

Previous Registration : Heirs of Panayotou Hj Kyriacou.

30 THIS IS TO CERTIFY that the property described above stands recorded in the Land Register in the name of the person or persons mentioned below and/or overleaf to the extent of the share or interest shown against

Defendants' Exhibits.

No. 12.
Certificate
of Land
Registration,
12th
November
1925,
continued.

each name, and that such person or persons is or are entitled to hold and enjoy the said property to that extent, subject to the provisions of the law affecting the tenure of immovable property.

Person in whose name the property stands registered and his share or interest therein.

Serial No.	R.O. N.133 Page	Share or Interest	Name and Residence	Reference File No.	Transferred to
1	822	Whole	The Village Commission of Kakopetria	A.4398/24	—

10

Registered at Nicosia the 12th November, 1925.

By Purchase.

Sale Price £15.0.0.

Fees paid £0.3.6.

Plaintiffs' Exhibits.

No. 13 (A).
Entry in
Land
Register,
19th June
1894.

No. 13 (A)—ENTRY IN LAND REGISTER.

Petra Registration No. 2568 dated 19.6.1894.

Running water—2 hrs. on every 22 days.

Reason for Grant of Title : By purchase.

Boundaries : Nil.

Previous Registration No. 2515.

20

No. 13 (B).
Entry in
Land
Register,
19th June
1894.

No. 13 (B)—ENTRY IN LAND REGISTER.

Petra Registration No. 2569 dated 19.6.1894.

Running water : 2 hrs. and 30 minutes in every 15 days.

Reason for the Grant of title : By Purchase.

Boundaries : Nil.

Previous Registration No. 2522.

No. 13 (C)—ENTRY IN LAND REGISTER.

Petra Registration No. 2570 dated 19.6.1894.

Running Water : 1 hr. in every 22 days.

Reason for Grant of Title : By purchase.

Boundaries : Nil.

Previous Registration : No. 2541.

Plaintiffs'
*Exhibits.*No. 13 (C).
Entry in
Land
Register,
19th June
1894.**No. 13 (A-1)—ENTRY IN LAND REGISTER.**

Petra Registration No. 2512 undated.

10 2 hours water (in a note made in red ink the words " on every 22 days " are added).

Boundaries : Running through the Karkod River on every 22 days from the Mulla Moustafa Division.

(By a note made in red ink the words " on every 22 days " is struck off and the words " of Troodos " is substituted.)

Reason for grant of title : Exchange No. 21/1886 in his name.

No. 13
(A-1).
Entry in
Land
Register,
Undated.**No. 13 (B-1)—ENTRY IN LAND REGISTER.**

Petra Registration No. 2522 (no date given).

20 2 hours 30 minutes water (in a note in red ink the words " on every 15 days Wednesday night " are added).

Boundaries : Running through the Karkod River on every 15 days Wednesday night from the Mourlousman Salisi Division. (By a note in red ink the words " on every fifteen days Wednesday night " are struck off and the words " of Troodos " are inserted.)

Reason for grant of title : Exchange No. 312/83 Rd. Sh.

No. 13
(B-1).
Entry in
Land
Register,
Undated.

Plaintiffs'
Exhibits.

No. 13 (C-1)—ENTRY IN LAND REGISTER.

Petra Registration No. 2541 (no date given).

No. 13
(C-1).
Entry in
Land
Register,
Undated.

1 hr. water on every 22 days.

Boundaries : Running through the Karkot River, from the Kanoura Division.

(Note : the words " of Troodos " are inserted in red ink.)

Reason for grant of title : Exchange No. 313/1883 Rd. Sh. in his name.

No. 13
(A-2).
Entry in
Field Book,
Undated.

No. 13 (A-2)—ENTRY IN FIELD BOOK.

(Turn of Mulla Mustafa.)

Date..... Whether whole property..... 10

Previous possessor (User) registered as his property in L.R.O. (1886).

Present ,, ,, Hindi Eff. Son of Mulla Moustafa.

Extent of Land.....Donums.....Evleks.

Category of Mulk : running water 2 hours.

Kind of property : Mulk.

Reasons for issue of title deed :

Boundaries : 2 hours every 22 days from the running water from the Karkut river of Troodos from the division called Mulla Mustafa's Turn.

Value.....

20

Payment in lieu of tithe.....

General Taxation Register.....Assessed Value.....

Title deed obtained : No. 21 of January, 1886.

registered in his name.

No. 13 (B-2)—ENTRY IN FIELD BOOK.

(Tuesday Turn of Moslem.)

Plaintiffs'
*Exhibits.*No. 13
(B-2).Entry in
Field Book,
15th
August
1893.

Date : 15th August, 1893. Whether whole of the property :

Previous possessor (User) : Registered as his property in L.R.O. (10).

Present ,, ,, Hindi Eff. son of Mulla Mustafa.

Extent of land.....donums.....evleks.

Category of Mulk : Running water 2 hours 30 Minutes.

Kind of Property : Mulk 2 hours and 30 Minutes.

Reasons for issue of title deed :

- 10 Boundaries : 2.30 hours running water every 15 days on Tuesday night from the Karkut river of Troodos from the Moslems' turn of Tuesday.

Payment in lieu of tithe

General Taxation Register. Assessed Value.....

Title deed obtained : 312 of February 1883 registered in his name.

No. 13 (C-2)—ENTRY IN FIELD BOOK.

Turn of Kannoura Water.

No. 13
(C-2).Entry in
Field Book,
16th
August
1893.

Date : 16th August 1893. Whether whole of the property :

Previous possessor (User) : Registered as his property in L.R.O. (1883).

- 20 Present Possessor (User) : Ahmed Hindi Eff. son of Moulla Mustafa.

Extent of land.....donums.....evleks.

Category of Mulk : Running water, one hour.

Kind of Property : Mulk.

Reasons for issue of title deed :

- Boundaries : One hour every 22 days from the running water of the Karkut River of Troodos from the division called Kannoura turn.

Value.....

Payment in lieu of Tithe.....

- 30 General Taxation Register.....Assessed Value.....

Title deed obtained : No. 313 of February, 1883, registered in his name.

No. 14—SEARCH CERTIFICATE.

(Form No. 51)

Plaintiffs'
Exhibits.No. 14.
Search
Certificate,
24th June
1948.

No. 4742 LAND REGISTRY OFFICE, CYPRUS—Certificate of Search.

Date of issue : 24.6.48. Fees paid : £—5.—p. Deposit Note No. 125508
Appl. No. A/1/242/48.

Applicant : E. Tavernaris of Nicosia, Advocate.

Application for: A search certificate showing the Reg. No. 2922 Kakopetria village with its boundaries, also the boundaries of the property of Panayotou Hadji Kyriacou at locality called Vateri at Kakopetria village registered in her name during the old General Registration and the boundaries of any other Registration transferred to the heirs of the said Panayotou in respect of the latter property. 10

Registration No.	Registration Date	Survey Ref. Block	Ref. Plot	Locality	Kind of property	Extent Don.Ev.ft.	Boundaries
2922	12.11.25			Vateri	Running water, the whole supply being one wheel well's spring water.		Coming to the surface from the spring having its source in the field belonging to the heirs of Panayotou Hj. Kyriacou, bounded by: Karkodi river Successors of Haralambo Kyriaco, Gavrieli Kyriaco, Successors of Hj Savva Hj Michaeli Road and Monobati. 20
511	1. 4. 98	3	171	do.	Field	2	Christofi Kyriaco & river BB., Gavriel Kyriaco & Successors of Hj Savva Hj Michael, Road and Christina Hj Kyriacou Christina & Michael Hj Kyriaco & Eleni Hj Kyriaco. Remarks: Whole share excluding the legal share (1/6 sh.) of Erodoto under R.2639. 30 40
2639	25. 6. 21	3	171	do.	Field 1/6 sh.	2	Road, River, heirs of Haralambo Kyriaco, Ttofi Gavriel & Road Remarks: Transferred from Rg. No. 511.

24.6.48.

(Sgd.) Illegible.

For D.L.R.S.

No. 15—VILLAGE CERTIFICATE.

A.4398
1924.

Exh. No. 15.
Act. No. 895/41.

Plaintiffs'
Exhibits.

No. 15.
Village
Certificate,
14th
January
1925.

CERTIFICATE.

We the undersigned Muhtar and Azas of the village of Kakopetria, do hereby certify that the running water described in A.4398/1924 has locally been inspected and enquired into as follows :—

2. The running water in question is a spring water of about one wheel well's in quantity coming to the surface of the earth, since
10 immemorial times, in the middle of the field situated at the locality known as (Vaderi) and belonging to the Applicants, the heirs of Panayotou Hj Kyriaco of Kakopetria.

3. The whole supply of the water above mentioned belongs to the heirs of Panayotou Hj. Kyriaco of Kakopetria by inheritance from the said Panayotou Hj. Kyriaco, who only irrigate the field on which it opens and nobody else has the right of irrigation. Panayotou Hj. Kyriaco died five years ago and left her children—the applicants—Euripidi, Irodotos, Styliani, Theognosia, Christo and Miltiadi Michaeli Kazano & husband Michael Antoni Kazano.

20 4. The running water in question having its source, as stated above, in the field described in B. 3/171 & Regn. No. 511 belonging to the said Panayotou Hj. Kyriaco goes from East to West and then runs to the river Karkodi on sketch drawn at the back of form No. 67.

5. A large amount of the spring water in question and marked A on the relative sketch is conducted in the year 1912, to the village of Kakopetria by iron pipes for the use of the inhabitants of the said village.

6. No record either by Tapu or by Malie has been found in the books of the Land Registry Office.

7. We now estimate for the whole supply of the water in question
30 (2750 c.p.) as assessed value.

8. The spring mentioned is situated far from the State Forest.

Kakopetria

Muhtar

14.1.1925.

(Sgd.) IOANNIS PAPA ANTONI.

Azas

(Sgd.) GEORGHIS HADJI CHARALAMBOU

(Sgd.) THEMISTOKLIS VASSILI.

Read over to and explained

Signed and Sealed in my presence.

(Sgd.) Illegible.

40

L.E.C.

14.1.25.

Plaintiffs'
Exhibits.

No. 16—CONSENT.

No. 16.
Consent,
27th
September
1925.

No. 4398/924.

Exhibit No. 16.

Act. No. 895/41.

CONSENT.

We the undersigned heirs of the deceased Panayotou Hadji Kyriacou of Kakopetria declare that we have no objection to the issue of a title deed in the name of the village committee of Kakopetria in respect of the running water at locality Vaderi Kakopetria (about one wheel well's) which comes to the surface of our field heirs of Panayotou Hadji Kyriacou and bounded by river Karkotis, heirs of Charalambos Kyriacou, Gavriel 10 Kyriacou, heirs of Hadji Savva Hadji Michael, road and footpath.

At Kakopetria
this 27.9.925.

In witness whereof,

1. (Sgd.) EURIPIDES MICHAEL KAZANOS.
2. (Sgd.) STYLLANI MICHAEL KAZANOU.
3. (Sgd.) THEONITSA MICHAEL KAZANOU.
4. (Sgd.) CHRISTOS MICHAEL.
5. (Sgd.) HERODOTOS MICHAEL.

We the undersigned Muhtar and Azas of Kakopetria Village certify that our co-villagers Euripides Michael Kazanos, Styliano Michael Kazanou, Theonitsa Michael Kazanou, Christos Michael, Herodotos Michael, the 20 three first named made their mark today in our presence and the two last named signed their names in our presence and the five of them declared as above they are of age and of sound mind and they are personally known to us.

At Kakopetria this 27.9.25.

The Muhtar,

(Sgd.) IOANNIS PAPA ANTONI.

The Azas,

(Sgd.) KYRIACOS HADJI GAVRILI.

(Sgd.) THEMISTOKLIS VASSILI.

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(Sgd.) KLEOVOULOS HAJI SAVVA.

(Sgd.) GEORGHIOS HADJI CHARALAMBOUS.