[VASSILIADES, MUNIR AND JOSEPHIDES,JJ.]

AYIA ANASTASSIA CHURCH, LAPITHOS, AND OTHERS,

Appellants-Plaintiffs,

v.

ANASTASSIA INDJEYIANNIS AND OTHERS,

Respondents-Defendants.

(*Civil Appeal No.* 4461)

Wells—Water rights—Protection against interference with—Remedies—Wells Law, Cap. 351, *sections* 3, 5, 7, 8 and 15—*Legislation concerning wells and water rights, since it first came into existence—Declaration as to remedies under section* 8 *of the Law.*

Civil Procedure—Findings of fact and drawing of inference in appeals—Principles applicable reiterated—Order remitting case to District Court under section 25 (3) *of the Courts of Justice Law,* 1960, *for action under section* 8 *of Cap.* 351.

Water rights—Water rights constitute immovable property within the provisions of the immovable property (Tenure Registration and Valuation) Law, Cap. 224.

Well—Sinking of well—Meaning of term "sinking of a well".

The appellants-plaintiffs as registered owners of the water known as "spring of Emin Katin" brought an action for an injunction restraining the defendants from interfering with appellant's water by deepening or otherwise extending their (defendants') well. It was the contention of the appellants-plaintiffs that the works carried out by defendants in their own well and the extensive pumping of water therefrom materially affected plaintiffs' said spring, the water of which was alleged to have been substantially diminished. The issues of fact before the trial Court as raised by the parties pleadings were two, *i.e.*

(*a*) whether the respondents carried out deepening and extending works in their own well, in the Autumn before action (October, 1959) and installed a new pumping plant, as alleged by the appellants ; and

(*b*) if yes, whether such works, followed by the pumping done by the respondents early next summer (May, 1960) caused appellants' water supply to diminish as alleged ; or at all.

The trial Court was further confronted with the legal aspect of the case *viz.* whether the Well's Law, Cap. 351 affords protection to the appellant's water rights.

The trial Court found for the appellant on both the aforesaid issues of fact. But it found further that the work done by respondents was not deepening and extending as alleged by appellant but simply cleaning of the well. And on this finding it concluded that appellants-plaintiffs have no remedy against the respondents.

On the legal aspect, the trial Court was of the view that section 7 of the Well's Law (*supra*) applies to the sinking or construction of new wells and does not apply to any deepening or extension of existing well and concluded that the claim failed and dismissed the action.

The plaintiffs appealed against this judgment on two grounds, mainly—

(*a*) that the trial Court's final finding is contrary to the weight of evidence, and not warranted thereby ; and

(*b*) that the trial Court misdirected themselves regarding the true interpretation and effect of the Wells Law (*Cap.* 351) and the application of the Common Law.

On the legal aspect of the matter appellants' case was that they are entitled to the protection afforded by section 7 of the Wells Law (*supra*) to a chain or system of wells ; and to the remedies in section 8 ; whereas respondents' case was that appellants water being a spring found at a point more than 600 feet away from respondents' well was beyond the radius of statutory protection ; alternatively they submitted that they did not deepen or extent their well in 1959 ; but if the Court finds that they did, their case falls under section 5, and not sections 3 or 15 and therefore the provisions in section 7 are not applicable ; and the remedies in section 8 are not available to the appellants.

The legal question which fell for decision by the Supreme Court was whether the Wells Law, Cap. 351, as in force at the material time, afforded any protection to appellants' water rights against the effects and consequences of what the respondents did at their neighbouring well, in October, 1959.

Held, (*I*) *on the factual aspect.*

(1) We have no difficulty in reaching the conclusion that on the evidence on record, the finding of the trial Court that the work carried out in defendants' well in 1959, was simply

cleaning the well is unsatisfactory. The very evidence upon which the Court found that the work was carried out in October, 1959, (and not in October, 1958, as stated by the defendants)—leads, in our opinion, to the conclusion—the unavoidable conclusion, we think—that the well, on that occasion, was also deepened and extended.

(2) We unanimously take the view that the only reasonable inference to be drawn from the established facts, is that the work carried out in respondents' well in October, 1959, included deepening and extending their well, in a way which enabled them to draw water from appellants' spring in the vicinity, to the extent of substantially diminishing its quantity when operating long enough their (respondents) newly installed electric pump. Applying now the well-established principles applicable to findings of fact and drawing of inferences in appeals, as recently reiterated in *Thomaides* v. *Lefkaritis* (reported in this volume at p. 20 *ante*) and in *Patsalides* v. *Afsharian* (reported in this volume at p. 134 *ante*) we find as above. We also find that the work was done without the required permit.

(II) on the legal aspect :

(1) There is no suggestion—and, obviously, none could be sustainable—that the water in question, is not covered by the provisions of section 7 of the statute. It is equally clear, that it is not the water of an " other well " within the meaning of the expression in the section. It is, therefore, either the case of a "chain or system of wells " whereby underground water flows to the surface, or, the case of a " spring or source " of water which flows naturally to the surface. In either case the radius of protection would be " six hundred feet of *any point* " of such chain or system of wells, or of such spring or source of the water. And surely in the present case, the material distance would be the distance between the offending well " A ", and *the* "*source*" of appellants' water near point "B" of the plan (*exhibit* 2) *viz.* 337 feet or according to the surface measurement 376 feet. The *source* of appellants' water (which naturally, needs most protection from neighbouring drilling) is, of course, where the water flows into the underground tunnel near point " B "; and not where it flows out of the tunnel at point "C". Interpreting section 7 in the way learned counsel for the respondents appears to do, would lead to the absurdity that the Wells Law offers no protection whatever against drilling (even done within a few feet from the source of

the water), where the plaintiff's underground tunnel through which the water reaches the surface, is longer than 600 feet. We are clearly of opinion that the statute permits of no such interpretation. The words " of any point ", in line four of the text of section 7, leave no room for doubt in this respect.

(2) We take the view that appellants' water, is that of a spring or source, reaching the surface for irrigation purposes, at point " C ", through a dug out tunnel commencing near point " B ", which forms part of the " system " by which the persons beneficially interested in this water, enjoy the benefits of their property. And that the radius of protection under section 7, is 600 feet from any point of the tunnel. Here, the point is the head-source near point " B " in *exhibit* 2, which puts respondents' well " A " more than 200 feet within the radius of protection.

(3) " Sinking " a well, in the grammatical and ordinary sense of the word, does not only mean sinking a new well from the surface of the ground. It may well include also sinking a well into a further depth. Even prior to 1951, when the present section 5 was introduced into the statute, sinking an ordinary shepherd's well from a depth of, say 10 or 15 feet, where the shepherd had been drawing water with the bucket to water his flock, down to a depth of say 30 or 40 feet or even much more, to get to water at that depth, for pumping up with an electric pump, for irrigation purposes, could well be described, we think, as " sinking " the well. And if the consequences of such sinking, were those in section 7, the provisions of the statute, intended and enacted to protect water rights, might well come into play, and the remedies in section 8 become available to the persons beneficially interested in the affected water. In any case, however, now after the amendment by Law 19 of 1951, which incorporated into the Wells Law, the present section 5, the legislator left no room for argument, or doubt on the point.

(3) All that the appellants have to do is to show to the satisfaction of the Court, that the work done by the respondents at their well " A ", is within the radius of protection from any point of appellants' source of water, and that by such operation of the respondents, "the amount of water in " appellants' source " is, or is likely, to be substantially diminished ". Having established all these requirements of section 7, the appellants are entitled to the statutory protection therein provided.

(4) We, therefore, take the view that exercising the powers of this Court under section 25 (3) of the Courts of Justice Law, 1960, we should remit this case with the judgment herein, to the District Court of Kyrenia, to make the order under section 8, which the circumstances of the case may require.

(5) In the result, we allow the appeal, and set aside the judgment dismissing the action on the 17th July, 1963. And we direct that judgment be entered for the appellants-plaintiffs with a declaration that they are entitled to remedies under section 8 of the Wells Law, Cap. 351, for the protection of their water rights in the water known as the Spring of Emin Katin, the subject-matter of the action, against interference from respondent-defendants' well marked " A " in the Land Registry plan *exhibit* 2.

Appeal allowed. Judgment and order accordingly.

Cases referred to :

Thomaides v. *Lefkaritis* (reported in this vol. at p. 20 *ante*) ;

Patsalides v. *Afsharian* (reported in this vol. at p. 134 *ante*) ;

Christofides v. *The District Officer, Kyrenia*, 1962 C.L.R. 43.

Appeal.

Appeal against the judgment of the District Court of Kyrenia (Evangelides & Savvides, D.JJ.), dated the 17.7.63 (Action No. 307/60) dismissing plaintiffs' action whereby they claimed *inter alia* an injunction restraining the defendants from interfering with their running water.

St. Pavlides with *G. Achilles*, for the appellants.

G. Constantinides, for the respondents.

Cur. adv. vult.

The following judgment was delivered by :

VASSILIADES, J.: The other two members of the Court have authorised me to deliver this judgment in their absence. We all take the view that reserved judgments should be delivered as soon as possible ; and that the unavoidable absence of one or more of the Judges constituting the Court, or the vacation, as in the present case, are no reasons for withholding delivery of the Court's decision once it has been duly reached. It is, we think, undesirable to keep the parties waiting even a day longer than necessary, for the result of a court proceeding.

VASSILIADES, J.: This is an appeal from a judgment of the District Court of Kyrenia, dismissing the action of the appellants, claiming the usual civil remedies for the protection of water rights.

The appellants as registered owners of the water known as "spring of Emin Katin", filed their action on 19th August, 1960, for an injunction restraining the defendant (now defendants) his employees, servants and agents from interfering with plaintiffs' water, by deepening or otherwise extending his (defendant's) neighbouring well. This claim was based on the contention that the work carried out by the defendant in his own well, and the extensive pumping of water therefrom, materially affected plaintiffs' said spring, the water of which was alleged to have been substantially diminished; and might probably get entirely lost in consequence of defendant's conduct. Appropriate injunction-remedies against drilling, tunnelling, pumping etc., were claimed, together with £2,000 damages.

Appellants' statement of claim, filed in due course, gave particulars and description of the respective properties of the parties as registered; and alleged that during the preceding autumn (October 1959) "defendant acting arbitrarily" extended, deepened, opened augers in various directions in order to increase the water supply of his well; and installed an electric pump which immediately affected appellants' water supply in question. Appellants' pleading further alleged that when operated for irrigation purposes, the following summer (May 1960) defendants' said installation, caused appellants' water to diminish to about one third of its strength "with a danger to be completely extinguished". Appellants gave the value of their water as: "at least £1,000"; and the value of the gardens and lands irrigated thereby £2,500.

Respondents' pleading put the plaintiffs on the strict proof of their claim. And, regarding their own case, the respondents, stating that their well existed there since 1890, alleged that they had been operating it with a diesel engine and pump of 8½ h.p. since 1947; and that "in August 1958", the diesel water-pump was replaced by an electric one "of smaller power, *i.e.* 6½ h.p., pumping water in the same way and during the same period of time" as when the well was operated for irrigation with the old diesel pump. (Defence: paragraph 4). Respondents expressly denied in their pleading that "because of this, the water of the plaintiffs was substantially diminished;" and went on to allege that "if plaintiffs' water was diminished this was due to the drought of the recent years".

The parties' pleadings thus raised two main issues of fact:

(*a*) Whether the respondents carried out deepening and

extending works in their own well, in the autumn before action (October 1959) and installed a new pumping plant, as alleged by the appellants ; and

(*b*) if yes, whether such works, followed by the pumping done by the respondents early next summer (May 1960) caused appellants' water supply to diminish as alleged ; or, at all.

In addition to these main issues of fact, legal questions affecting the ownership and enjoyment of water rights, called for decision in this case.

Between the filing of the action in August, 1960, and the trial in November, 1962, several interlocutory steps were taken, which need not be discussed at this stage.

The action, as usual in water-disputes, was strongly contested. The trial lasted for five days, during which sixteen witnesses were extensively examined ; thirteen called by the appellant-plaintiffs, and three by the respondent-defendants. The evidence included that of a Lands Clerk (P.W.1); the Chief Foreman and a technical assistant of the Water Development Department (P.W. 2 and P.W. 3) ; the Rural Constable of the area (P.W. 7) ; five of the plaintiffs ; an expert described as an Electrical, Mining and Hydraulic Engineer (D.W. 1) ; the well-digger who worked in defendants' well (D.W.2) ; the old proprietor of that well (D.W. 3) ; and the Head of the Village Commission, called by leave of the Court, to give rebutting evidence at the instance of the plaintiffs. A number of exhibits, including certificates of registration, plans and field-records, were also put before the Court. A sketch, prepared by the Chief Foreman of the Water Development Department (P.W.2) for the purposes of this case, exhibit 1, showing both wells, with useful and material particulars and measurements, is of considerable assistance in the matter.

The District Court delivered their reserved judgment on the 17th July, 1963, two months after the closing of the trial. The evidence was carefully considered ; and the questions of law dealt with. On the two main issues of fact, the trial Court found for the appellant-plaintiffs: " In October, 1959—the judgment reads in page 2B (p.61 of the record)—defendant No. 1 carried out some work in his well. Defendant alleged that this work was done in 1958, but on this point we have accepted the evidence on behalf of the plaintiffs that the work was carried out in October, 1959 ".

And regarding the effect of such work and of pumping thereafter, on appellants' water, the trial Court say : "There is not the least doubt that continuous pumping of the water in the well of the defendants, by the present pump, substantially diminishes the water of the spring of the plaintiffs. This at the trial, has been rightly conceded by defendants' counsel—the judgment goes on to say—after hearing the evidence of the expert of the plaintiffs and of the expert of the defendants ". (p. 62B).

After discussing further, however, the evidence before them, the Court find themselves unable to say that the work done by the defendant at the material time (October, 1959) was deepening and extending the well, as alleged by the plaintiffs. " We have no faith—the trial Court say in their judgment, at p. 63C of the record—in what the well-digger, or defendant No. 1 have said. But on the other hand, we have no evidence which can prove that defendant No. 1 did anything more than clean his well. On the above finding—the Court conclude—the plaintiffs have no remedy against the defendants. But even if the proper finding should have been that defendant No. 1 had carried out a deepening or an extension of his well, the plaintiffs again would have no remedy ".

And, after dealing with the legal aspect of the case, and taking the view that section 7 of the Wells Law (Cap. 351) " applies to the sinking or construction of new wells and does not apply to any deepening or extension of an existing well," the District Court reached the conclusion that the claim failed, and dismissed the action, with costs. The claim for damages was apparently not pressed and was ruled out during the trial.

From this judgment, the plaintiffs appeal on eight grounds as set out in their notice of appeal, which, however, may be summarised under two heads :

(*a*) that the trial Court's final finding (or verdict, as described in the notice) is contrary to the weight of evidence, and not warranted thereby ; and

(*b*) that the trial Court misdirected themselves regarding the true interpretation and effect of the Wells Law (Cap. 351) and the application of the common law.

Learned counsel for the appellants ably submitted, by extensive reference to the record, and to evidence which the trial Court did not appear to doubt, that the work done by defendant No. 1 in his well at the material time (October,

1959) was more than cleaning the well ; it was deepening and extending it. And then fitting it with a new pumping installation. On these facts, counsel argued that the appellants were entitled to the protection provided in section 8 of the statute. And to appropriate remedies.

Learned counsel for the respondents, on the other hand, apparently retracting from the position described in the judgment of the trial Court, now took the line that the tests carried out by the experts involving continuous pumping for prolonged periods, were not representative of the pumping actually carried out by the respondents in the enjoyment of their water rights. And argued that regarding facts, the findings of the trial Court should not be disturbed. No widening, deepening or extending-work was carried out in defendants' well at the material time, learned counsel submitted ; simply cleaning. And as regards the law, he submitted that the protection in section 8 of the statute, covered only cases which could be brought within the provisions of section 7. It cannot be applied to the facts of this case, where there was only cleaning of an old well ; and no sinking or construction of a new well under either section 3, or section 15. In any case, counsel argued, appellants' water did not flow to the surface from any " chain or system of wells "; nor was it within the distance of eighty feet, set by the legislator for the protection of " other wells ".

Going first to the facts of the case, we have no difficulty in reaching the conclusion that on the evidence on record, the finding of the trial Court that the work carried out in defendants' well in 1959, was simply cleaning the well, is unsatisfactory. The very evidence upon which the Court found that the work was carried out in October, 1959, (and not in October, 1958, as stated by the defendants)—leads, in our opinion, to the conclusion—the unavoidable conclusion, we think,—that the well, on that occasion, was also deepened and extended.

Witness Karpasitis, the Rural Constable (P.W.7) who visited defendants' well in October, 1959, upon instructions from the Commissioner's office, saw wet " havara " soil " spread all round the well "; and then asked defendant No. 1 " whether he had a licence *to deepen* the well ". Witness Mitsou (P.W.8) after hearing of, and seeing preparations for the work, saw " havarochoma " near defendants' well ; and passing plaintiffs' tank noticed that the water coming out of the spring " had diminished in quantity by about 50 per cent ". Witness Odysseas Ky-

riacou, Head of the Village Commission, called to rebut the well-digger (D.W.2) gave useful evidence on the point, the truthfulness of which was accepted by the trial Court. There was also the evidence of witness Petsas (P.W.5) who went down defendants' well to clean it 12 or 13 years earlier, when there was no water in it. He found an ordinary, round well, with no tunnels or auger-holes ; and he spoke of the " mud " removed from the bottom. " From this evidence, however, we cannot deduce anything of importance,—the District Court say in their judgment (at p. 62E)—as to the work which was carried out in 1959, because it is not disputed that in 1951 defendant No. 1 had installed a diesel engine and he was pumping water out of that well..... .....The inference, therefore, is that between the time this labourer had gone down the well and the time that the diesel pump was installed, some other work must have been carried out in the well. That work might have been tunnelling, augering etc.".

With all respect, we take a different view ; and we draw a different inference from the established facts. We take the view that before any inference can be drawn, the whole of the above evidence must be put together with another, most important and undisputed fact, that the complaint arose when the defendant started operating the plant installed after the work carried out in his well in October, 1959. It was then that appellants' water was diminished to about half its quantity ; and one of the proprietors, witness Christoforou (P.W.4) went to the Commissioner's office to complain about it (p. 22, A). " Until 1959, the volume of the water was not affected ", this witness said (p. 21, C). No cause for complaints, notwithstanding the fact that defendants' well had been operated for years prior to October, 1959, with a pump functioning upon a more powerful engine, according to the respondents ; and, of course, notwithstanding whatever work had been done in respondents' well prior to October, 1959. The tests carried out by independent official witnesses, for the purposes of this case, established beyond all doubt appellants' complaint that pumping at respondents' well after the work in October, 1959, substantially diminished the water of their spring. The figures and conclusions in the evidence of witness Ioannou, the Technical Assistant who supervised the tests (P.W.3) and whose evidence has apparently been accepted by the trial Court, sufficiently describe the cause and extent of appellants' complaint. These facts must, moreover, be considered

in the light of respondents' defence. In their pleading, filed in October, 1960, the respondents deny having done any work in October, 1959 ; and they allege that " if plaintiffs' water was diminished, this is due to the drought of the recent years " (paragraph 4 (*b*)). A defence which they have completely failed to substantiate. In these circumstances we unanimously take the view that the only reasonable inference to be drawn from the established facts, is that the work carried out in respondents' well in October, 1959, included deepening and extending their well, in a way which enabled them to draw water from appellants' spring in the vicinity, to the extent of substantially diminishing its quantity when operating long enough their (respondents) newly installed electric pump. Applying now the well-established principles applicable to findings of fact and drawing of inferences in appeals, as recently reiterated in *Thomaides* v. *Lefkaritis* (reported in this vol. at p. 20 *ante*) ; and in *Patsalides* v. *Afsharian* (reported in this vol. at p. 134 *ante*), we find as above. We also find that the work was done without the required permit.

We can now proceed to deal with the legal position, arising from these facts. And in order to do so, we must describe the parties' wells as shown in the exhibits. The respondents own the well marked " A ", on the Land Registry plan exhibit 2, in their own registered property, (plots 172/1 and 172/2 coloured green on the plan) near respondents' house. This well is also shown on the left hand side of the sketch prepared for the purposes of this case, by witness Georghios Michael (P.W. 2) the Chief Foreman of the Water Development Department. The depth, water-level, and tunnelling of the well are also shown in the sketch. At a distance of 376 feet to the north of respondents' well, on plot 37 belonging to the first appellants, there is the head-well of the water known as spring of Emin Katin, the registered property of all the appellants. In fact this is not a head-well at all. It is a hole of 2 1/2 ft. × 2 1/2 ft. leading from the ground-surface to a tunnel 18 ft. below. It is marked " B " on the plan, exhibit 2 ; and it is found on ground at a lower level from respondents' property shown on the sketch (*exhibit* 1). The mouth of this well " B " is at about the same level as the bottom of respondents' well " A " which is 56 feet deep. Appellants' well " B " is not operated as a well at all. It simply leads down to the underground tunnel. " When I went down into the well and found the tunnel", the witness (P.W. 2) stated, " I crept into the tunnel and proceeded about 30 feet further up south-

wards, but I could not proceed any further *as there was water in the tunnel*". This is the water running into the underground tunnel shown on the sketch, exhibit 1, to have a length of 280 ft. (as far as it could be measured) by 5 ft. height and 3 ft. width. Running northwards along this tunnel, the water comes out to the surface at the point marked " C " on the plan, exhibit 2, where the surface distance from appellants' head-well " B " is given as 224 feet. There, at point " C ", the water runs into appellants' tank, 2 ft. deep, (2′×20′×21′) wherefrom the appellants take it for irrigation purposes. The two surface distances, from points " A " to " B " and " B " to " C " on exhibit 2, add up to just over 600 feet (376+ 224 1/2). The straight line distance from " A " to " C " must be less than 600 feet. The underground distances between these same points, as given on the sketch, exhibit 1, add up to 617 feet ; which in a straight line must also be less than 600 feet. After all, there cannot be much difference between the surface and the underground distances between these points.

The first question to consider now, is whether the Wells Law, Cap. 351, affords, in these circumstances, any protection to appellants' water rights in the spring in question ; and if yes, what are the remedies available?

Water-rights constitute immovable property within the provisions of the Immovable Property (Tenure, Registration and Valuation) Law, Cap. 224. Appellants' rights are duly registered, as it may be seen in exhibit 3. The property there is described as " Running water and tank called ' Spring of Emin Katin ' "—This last registration is dated 12.12.49, but it comes from a previous one, indicating that the water-rights have been registered earlier ; and they have been enjoyed, according to the evidence, over a long period of years.

Appellants' case is that they are entitled to the protection afforded by section 7 of the Wells Law, Cap. 351, to a chain or system of wells ; and to the remedies in section 8.

The case for the respondents is that the appellants have described their water as a spring, in the indorsement of the writ ; and it cannot be treated otherwise. In any case, it is a spring, respondents say, found at point " C " of the Land Registry plan (*exhibit* 2) more than 600 feet away from respondents' well at point " A " ; and therefore beyond the radius of statutory protection. Alternatively,

counsel for the respondents submitted that his clients did not deepen or extent their well in October, 1959. But if the Court finds that they did, their case falls under section 5, and not sections 3 or 15 ; and therefore the provisions in section 7 are not applicable ; and the remedies in section 8 are not available to the appellants. In support of his submission, counsel referred us to *Christofides* v. *The District Officer, Kyrenia* 1962 C.L.R. 43.

It may be pointed out straight away, that the case just referred to, decides that for the deepening of an existing well, a conviction founded on section 3 (1), followed by penalties under section 13 (1) and an order to close the well under section 13 (2) could not be sustained ; the conviction and consequential orders were therefore set aside. The distinction it makes between the opening of a new well and the deepening of an existing well, can be of very little assistance here.

The present Wells Law (Cap. 351) was enacted in 1946 with amendments in 1951 and 1953. But as early as 1896, the legislature in Cyprus found it necessary to make statutory provision " for the better protection of wells and water rights ", by enacting the Wells Law of that year (No. 6 of 1896). The object of that legislation is made perfectly clear in section 1 (1), the material part of which reads:

> " If any person shall sink any well within a distance of of any point in any existing chain or system of wells by which underground water is brought to the surface, or within the like distance of any spring or the source of any water which flows naturally to the surface, or within of any well from which water is raised to the surface for the purpose of irrigation and thereby substantially diminishes the amount of water supplied by such chain or system of wells, or source, or well, the person beneficially interested in the last-named water, may bring an action in the District Court ; and if it is proved that the supply of water is substantially diminished the Court may make such order as may be required to prevent such damage in future and may award damages as may appear reasonable and just."

These statutory provisions, read in the light of the legal remedies available at that time, for the protection of water-rights, present a very clear picture of the evil which the Wells Law was intended to remedy.

About half a century later in September, 1945, a new Wells Law was published as a Bill entitled : " A Law to make *better provision* for the Sinking and Construction of Wells and their Protection *and the Protection of Water Rights*."

Giving the objects and reasons of the proposed legislation, (at p. 260 of the Official *Gazette* of the 15th November, 1945) the Attorney-General wrote :

> " In view of the forthcoming enactment of the Immovable Property (Tenure Registration and Valuation) Bill and the consequent abolition of the various categories of land, it is necessary to review the position regarding the sinking of wells and the protection of wells and water rights now obtaining under the Wells Law, 1896.
>
> 2. As regards the sinking .
>
> 3. Regarding the protection of wells, the Bill makes provision for their protection on the lines of the present Wells Law, 1896, which will be repealed. The protection afforded to wells under the Bill is extended to wells sunk or constructed on land of any category and not merely on land other than Mulk as is the case at present."

The statute which resulted from this Bill, is Law No. 27 of 1945, published in December of that year, which came into force on 1st September, 1946 ; and was Cap. 312, in the 1949 Edition of the Statute Laws of Cyprus. After the amendments by Law 19/51, and Law 42/53, the statute is now Cap. 351 in Volume VI of the 1959 Edition of our Laws. In the present case, the question which falls for decision is whether the Wells Law, as in force at the material time, affords any protection to appellants' water rights, against the effects and consequences of what the respondents did at their neighbouring well, in October, 1959.

Incidentally, and arising out of respondents' submission on the point, we first have to determine what exactly are appellants' rights within the statute ; whether the water in which they are " beneficially interested ", comes from a " chain or system of wells whereby underground water flows to the surface "—as submitted on behalf of the appellants,—or, from a " spring or source of any water which flows naturally to the surface ", as submitted on behalf of the respondents.

In our view, this point presents no difficulty whatsoever. There is no suggestion—and, obviously, none could be sustainable—that the water in question, is not covered by the provisions of section 7 of the statute. It is equally clear, that it is not the water of an " other well ", within the meaning of that expression in the section. It is, therefore, either the case of a " chain or system of wells " whereby underground water flows to the surface, or, the case of a " spring or source " of water which flows naturally to the surface. In either case the radius of protection would be " six hundred feet of *any point* " of such chain or system of wells, or of such spring or source of the water. And surely in the present case, the material distance would be the distance between the offending well " A ", and the " *source* " of appellants' water near point " B " of the plan (*exhibit* 2) *viz.* 337 feet ; or according to the surface measurement 376 feet. The *source* of appellants' water (which, naturally, needs most protection from neighbouring drilling) is, of course, where the water flows into the underground tunnel near point " B " ; and not where it flows out of the tunnel at point " C ". Interpreting section 7 in the way learned counsel for the respondents appears to do, would lead to the absurdity that the Wells Law offers no protection whatever against drilling, (even done within a few feet from the source of the water), where the plaintiff's underground tunnel through which the water reaches the surface, is longer than 600 feet. We are clearly of opinion that the statute permits of no such interpretation. The words " of any point ", in line four of the text of section 7, leave no room for doubt in this respect.

We take the view that appellants' water, is that of a spring or source, reaching the surface for irrigation purposes, at point " C ", through a dug out tunnel commencing near point " B ", which forms part of the " system " by which the persons beneficially interested in this water, enjoy the benefits of their property. And that the radius of protection under section 7, is 600 feet from any point of the tunnel. Here, the point is the head-source near point " B " in exhibit 2, which puts respondents' well " A " more than 200 feet within the radius of protection.

Respondents' work of deepening and extending their well, in October, 1959, was an operation which, according to section 5, required a permit under the provisions of the Wells Law. The respondents failed to apply for, or obtain such a permit. Had they done so, the cause

which gave rise to this long and expensive litigation, would, most probably, never arise. But in any case, the legislator afforded protection to water-rights falling within section 7, independently of, and *notwithstanding* any permit which " may have been granted by the Commissioner " under the Law.

Counsel for the respondents submitted that section 7 protects water rights from new wells. It is not applicable, he argued, in the case of deepening or extending old wells. Counsel based this submission, on the reference made to permits granted under sections 3 and 15 of the statute, in the first two lines of section 7.

We are clearly of opinion that the submission is untenable. We have already stated our view as to the objects and reasons of this legislation, ever since it first came on the statute book, in 1896. It was the protection of water rights, in the manner therein provided. " Sinking " a well, in the grammatical and ordinary sense of the word, does not only mean sinking a new well from the surface of the ground. It may well include also sinking a well into a further depth. Even prior to 1951, when the present section 5 was introduced into the statute, sinking an ordinary shepherd's well from a depth of, say, 10 or 15 feet, where the shepherd had been drawing water with the bucket to water his flock, down to a depth of say 30 or 40 feet or even much more, to get to water at that depth, for pumping up with an electric pump, for irrigation purposes, could well be described, we think, as "sinking " the well. And if the consequences of such sinking, were those in section 7, the provisions of the statute, intended and enacted to protect water rights, might well come into play, and the remedies in section 8 become available to the persons beneficially interested in the affected water. In any case, however, now after the amendment by Law 19 of 1951, which incorporated into the Wells Law, the present section 5, the legislator left no room for argument, or doubt on the point.

" For the purposes of this Law " (which of course include the protection of water-rights under section 7) " widening, deepening or otherwise extending any existing well shall be deemed to be an operation in respect of which a permit must be obtained under the provisions of this Law ", section 5 expressly provides. And a permit under the Law, is a permit under the provisions of section 3 ; even the permit contemplated in section 15, is a permit under section 3, as the last part of the proviso clearly indicates. The respond-

ents have carried out the deepening and extending of their well "A" in October, 1959, without obtaining the required permit. If, " notwithstanding " a permit under section 3, the appellants would be entitled to the protection of their water rights under section 7, and to the remedies provided in section 8, there can be no question that they are, a *fortiori* so entitled where such a permit has never been granted.

All that the appellants have to do is to show to the satisfaction of the Court, that the work done by the respondents at their well " A " is within the radius of protection from any point of appellants' source of water, and that by such operation of the respondents " the amount of water in " appellants' source " is, or is likely, to be substantially diminished ". Having established all these requirements of section 7, the appellants are entitled to the statutory protection therein provided.

Such protection is an order by the District Court under section 8 (1) (*a*) or (*b*). It is for the District Court to make in the particular circumstances of each case, the order required " to prevent damage to the plaintiff ". Before doing so, the Court may have to receive evidence as to any conditions, or directions to be included in the order ; such as, for instance, the length or the size (diameter) of the sucking tube used in pumping water out of the offending well. Moreover, the Court may make an order subject to alterations which may become necessary by changing circumstances until a further order. Another reason for which we think that the District Court would be the appropriate Court to make the order, is that it is the Court most convenient to the parties, to control and enforce the execution of its orders. This would offer, in addition, the advantage of decision subject to an appeal.

We, therefore, take the view that exercising the powers of this Court under section 25 (3) of the Courts of Justice Law, 1960, we should remit this case with the judgment herein, to the District Court of Kyrenia, to make the order under section 8, which the circumstances of the case may require.

In the result, we allow the appeal, and set aside the judgment dismissing the action on the 17th July, 1963. And we direct that judgment be entered for the appellant-plaintiffs with a declaration that they are entitled to remedies under section 8 of the Wells Law, Cap. 351, for the protection of their water rights in the water known as the Spring of Emin

Katin, the subject-matter of the action, against interference from respondent-defendants' well marked " A " in the Land Registry Plan, exhibit 2.

We further direct under section 25 (3) of the Courts of Justice Law, 1960, that the case be remitted to the District Court to make the order or orders under section 8 of the Wells Law, appropriate in the circumstances of this case, as the Court may think fit.

As to costs, we think that the appellants are entitled to their costs in the action and in the appeal ; and we make order accordingly, for costs to be taxed on the scale of claims not exceeding £2,000.

Appeal allowed. Judgment and orders accordingly.

MUNIR, J.: I concur.

JOSEPHIDES, J.: I have had the advantage of reading the judgment of my learned brother VASSILIADES, J., with which I agree and I have nothing to add.

Appeal allowed. Judgment and orders in terms.