Ottoman Laws and not by the Laws of any non-Moslem Christian Community. This point, however, is open for further consideration as in our view the Plaintiffs are entitled to succeed, whether Canon or Moslem Law governs the case.

In either case we are of opinion that the Plaintiffs are entitled to succeed to any Arazi-Mirié property to which their mother was entitled at the time of her death, and to her share of her father's property which he was entitled to at the time of his death.

The judgment of the District Court on this point must be set aside.

[HUTCHINSON, C.J. AND TYSER, J.]

HUTCHINSON, C.J. & TYSER, J.
1902
June 3

SADYK AND OTHERS,

v.

PAPA MICHAELI YANNI AND OTHERS,

EXP. HAJI ECONOMO AND OTHERS (CERTAIN OF THE DEFENDANTS REPRESENTING THE VILLAGES OF BEDULA AND MODULA).

JUDGMENT—CORRECTING ERROR IN JUDGMENT—TEMYIZ COURT JUDGMENT CORRECTED BY THE SUPREME COURT—RULES OF COURT—VILLAGE ACTION—SERVICE OF NOTICE.

A judgment of the Temyiz Court forms part of the records of the Supreme Court.

The Supreme Court has the same power to rectify a judgment of the Temyiz Court as it has to rectify one of its own judgments.

Every Court has inherent power to rectify mistakes in its own records.

In village actions under the Turkish Law the villages sue in a quasi-corporate capacity.

The Rules of Court 1886, do not apply to an action in the old Turkish Courts.

There being no existing rules to enable notice to be given to certain villages, parties to an action, of an application before the Court affecting their rights, the Court gave directions as to the manner of service, and directed that the villages should be served in the manner provided for serving villages with notice under the Malicious Injury to Property Law.

When it was proved to the Supreme Court that a difference existed between the Turkish version of the decision of the Temyiz Court contained in a mazbata and the English version written below it, and that the English version correctly set out the decision of the Temyiz Court, the Court directed the Turkish part of the mazbata to be amended so as to make it agree with the English.

This was an application to rectify a judgment of the Temyiz Court dated the 28th February 1880, given on appeal from a judgment of the Daavi Court of Nicosia in an action in which Sadyk and three other persons representing the village of Lefka were the Plaintiffs, and Papa Michaeli Yanni and eleven other persons representing respectively the villages of Modula, Bedula, Kalapanayoti and Ikou were the Defendants.

Three of the Plaintiffs and four of the Defendants having died, an order was made on the 4th February, 1902, prior to the application, that the action be continued, the heirs of such Plaintiffs as were dead being

substituted for the Plaintiffs deceased as Plaintiffs, and the heirs of such Defendants as were dead being substituted for the Defendants deceased as Defendants.

On the 26th March, 1902, this application was made on behalf of such of the Defendants representing the villages of Bedula and Modula, as were still alive and the heirs of such as were dead.

The King's Advocate, Pascal and Theophani appeared for the applicants (the surviving Defendants who represented Bedula and Modula and the heirs of such as were dead).

They called evidence to shew that the judgment sought to be corrected as drawn up, was ambiguous and did not correctly represent the decision of the Court.

They contended that by Sec. 163 of the Courts of Justice Order in Council Clause 182, the judgment was a record of the Supreme Court.

That there was an inherent power in the Court to rectify errors in its records.

Lawrie *v.* Lees, 7 App. Cas. 44.

In *re* Swire, 30, Ch. D. 246.

Milson *v.* Carter, 1893, A.C. 638.

Hatton *v.* Harris, 1892, A.C. 560.

That lapse of time was no answer to the application, if the order could be made without prejudice to rights which have intervened since the judgment.

That there was no question as to whether the judgment of the Court was right. The only question was whether the judgment, as recorded, correctly stated the judgment of the Court.

Gooding, Artemis and G. Chacalli for the Respondents (heirs of the Plaintiffs deceased).

The Court cannot now make the alteration. Court of Justice Order in Council, 1882, Sec. 40.

The Plaintiffs in the original action represented the village of Lefka, on their death the mandate ceased and does not pass to their heirs, Mejellé 1529.

The existing inhabitants of Lefka should be joined.

That the Supreme Court has no greater power than the Temyiz Court, and that the Temyiz Court could not amend a judgment after 20 years, the judgment being sealed and there being no evidence of fraud.

That there is no such power by Rules of Court, Order in Council or Ottoman Law.

The Rules of Court do not apply.

The K.A. in reply. The only course was to join the heirs of the deceased parties.

HUTCHINSON, C.J. & TYSER, J.

SADYK AND OTHERS v. PAPA MICHAELI YANNI AND OTHERS

Judgment: The Court after reviewing the evidence as to whether there was an error in the record of the judgment of the Temyiz Court continued as follows:

The contention of the Respondents that this Court has no power to rectify a judgment of the Temyiz Court is in our opinion bad. When the Supreme Court was substituted for the Temyiz Court by the Cyprus Courts of Justice Order, 1882, the records of the Temyiz Court were made records of the Court of Appeal (Sec. 163). The Court has therefore the same power to rectify a judgment of the Temyiz Court as it has to rectify one of its own judgments. And there is no question that every Court has an inherent power to rectify mistakes in its own records; *see* Lawrie *v.* Lee, 7 App. Cas. 31, *re* Swire, 30, Ch. D. 239.

" A further question was raised as to whether the Court had before it the parties interested in the judgment."

The Court would not rectify a judgment 20 years old without giving all parties interested in the judgment an opportunity of being heard.

As to this point the facts are as follows:

In the Temyiz Court the parties to the appeal appear from the record to have been as follows:

Appellant. Pascal Effendi on behalf of the inhabitants of the villages of Niko, Kalapanayoti, Modula and Bedula.

Respondents. Izzet, Ahmet and Mehmet Effendis and Diran Augustin Effendi on behalf of the inhabitants of Lefka and in person.

The parties to the original action in the Daavi Court were:

1. Sadik of Lefka
2. Haji Emin of Lefka
3. Mehmet Said of Lefka
4. Izzet Effendi of Lefka *Plaintiffs,*

and

1. Papa Michaeli Yanni of Modula
2. Sophocles Tzirgalli of Modula
3. Christodoulo Haralambo of Modula
4. Haji Georghi Haji Loizi of Modula
5. Haji Economo of Bedula
6. Leonida Papa Georghi of Bedula
7. Yanni Ktizoudi of Kalapanayoti
8. Loizo Moukhtari of Kalapanayoti
9. Kazamia Haji Loizo of Kalapanayoti
10. Papa Yanni Haji Michaeli of Kalapanayoti
11. Sava Haji Loizou of Ikou
12. Haji Pieri of Ikou *Defendants.*

Before the 26th July, 1901, of the Plaintiffs, the 1st, 3rd and 4th had died, and of the Defendants the 3rd, 4th, 6th and 12th were dead

On the 4th February, 1902, an application made under Order 9 R 13 of the Rules of Court, on behalf of the 1st, 2nd and 5th Defendants, and the heirs of the 3rd, 4th and 6th Defendants (being the surviving Defendants from the villages of Modula and Bedula and the heirs of such as were deceased), that the action should be continued between the surviving Plaintiff and the heirs of the Plaintiffs deceased, and the surviving Defendants and the heirs of the Defendants deceased, was granted; and the new parties were directed to enter an appearance on the 20th February, 1902.

On the 5th March, 1902, the application now under consideration was filed. It purports to be on behalf of the Defendants Papa Michaeli Yanni, Sophocles Tzirgalli, Haji Economo and the heirs of the other Defendants in the Daavi Court who were inhabitants of Modula and Bedula.

The title of the action remained the same as it had been in the Daavi Court in 1879

On the 20th March, 1902, Mr Gooding appeared for the heirs of the Plaintiffs deceased

On the hearing of this application he also appeared in the same capacity, and Mr Artemis appeared and stated that he was instructed by the agent of the Lefka people

The Defendants who were inhabitants of villages other than Bedula and Modula were not represented

An affidavit sworn by Mr Theodotou on the 15th April, 1902, does not sufficiently account for the absence of these Defendants from Kalapanayoti and Ikou, and until they have a chance of being heard, this Court will not give any judgment

We also agree with the argument of Mr Gooding that the Rules of Court have no bearing upon this application

We are further of opinion that if the Plaintiffs and Defendants on the record in the Daavi Court were the real parties to the action, the rights which they claim to exercise over the water, being rights which they have as inhabitants, would not necessarily devolve upon their heirs

If the record of the Temyiz Court means that certain of the Respondents appeared to protect rights which they claimed personally, such persons or their heirs have appeared before this Court, and have been heard.

In our opinion however the persons present at the trial were not the real litigants, but the real litigants were the villages from which the said persons came

The persons present at the trial were present in accordance with the provisions of Sec. 1645 of the Mejellé.

This Section should be read in conjunction with Secs. 1618, 1833, 1834 and 1835 and some light may be thrown on it by consideration of Sec. 1642.

The effect of all these Sections appears to be that generally all the Defendants to an action must be present or represented at the trial, that where villages of over 100 inhabitants were litigants the presence of some only of the inhabitants was required, but the judgment in such a case would be given for and against the villages, and would be binding on the villages, in the same way as judgment to recover a debt from the estate of a deceased person given on proof in the presence of one heir only is binding on all the heirs (Sec. 1642).

The villages therefore, or rather the inhabitants of the villages were the parties interested in the judgment on the records of the Court.

And it would seem that it is not only the inhabitants at the time when the action was tried, but the persons who constitute the inhabitants from time to time.

The village seems to be invested with a quasi corporate capacity for these matters.

It is the villages in this quasi corporate capacity which are the real parties interested in the judgment, and they should be the parties to be heard by the Court before it decides this application.

The Court therefore will not grant the application before the villages have a chance of being heard.

We do not however propose to dismiss the application on this account but to adjourn it for further hearing to enable notice of the application to be served on the villages of Lefka, Kalapanayoti, Ikou and Modula.

There are no Rules of Court making provision for bringing the villages before the Court on such an application as this; therefore the Court must, to prevent a miscarriage of justice, give directions how it should be done.

We direct that a copy of the application and a notice of the day fixed for hearing be served and posted in the way provided for service and posting of a copy of a petition and notice of the day fixed for the hearing thereof under The Malicious Injury to Property Law 1894 (No. VI. of 1894,) Sec. 4; and that the Applicants have leave to put down the case for further hearing on a day to be stated in such notice.

The villages so summoned will then have an opportunity to appear and to advance any arguments they wish to adduce to the Court, after hearing which the Court will be in a position to deliver a final decision on the application.

All questions of costs will be reserved until the final determination of the application.

On the 29th December, 1902, the case came on again for hearing.

Pascal, *Theophani* and *J. Kyriakides* for the Applicants.

Gooding and *Mustafa Sadreddin* for Lefka.

A. Kyriakides for Ikou and Kalapanayoti.

Service on the different villages of notice of the application was proved.

The facts are as follows:

Lefka is a Turkish qassaba at the foot of the mountains; Bedula and Modula are two Christian villages in the hill near the source of certain waters in dispute.

In a petition, tried by the Daavi Court in 1879, submitted by certain residents of Lekfa, the petitioners alleged that by virtue of certain Hujets the qassaba of Lefka had an *ab antiquo* right of irrigation over the running water rising out of the locality Yedi Bunar and the river Marakho for six days and six nights in the week and claimed an injunction to prevent the inhabitants of Bedula and Modula from interfering with such water.

The Court found in their judgment that the water of Yedi Bunar and Marakho should flow six days and six nights to the inhabitants of Lefka.

On appeal by the Defendants to the Temyiz Court a decision was come to by the Court, Mr. Bovill being the English Assessor.

A mazbata having been drawn up in Turkish and sealed by the five Judges, which in Mr. Bovill's opinion was loosely worded and might have rendered the mazbata open to misconstruction, Mr. Bovill prepared a draft mazbata in English to put the decision of the Court in unmistakable language and had it translated into Turkish and sent to the Court.

This mazbata was sealed by three of the Judges.

The two judges (Ali Effendi and Osman Nouri Effendi) who did not seal the second mazbata refused to do so and gave their reasons in writing for refusing, Osman Nouri, amongst other reasons, saying that the 'Ilams held by the Lefka people fully supported their claim and that it was unlawful for a person to be dispossessed of what belongs to him.

Mr. Bovill afterwards had a new copy of the mazbata as prepared in the second instance signed by the three members of the Court who approved of it.

An English version of the mazbata was written below the seal of the three Judges and the High Commissioner's signature was written below that.

Mr. Bovill in his report to the High Commissioner on the mazbata states, " The Court have come to a conclusion in which I concur that the " people of Lefka have never been entitled to the large rights they " claim."

In 1899, in an action with reference to the use of this water, it was held by the Supreme Court that the Turkish version of the mazbata gave to Lefka all the water of Yedi Bunar and Marakho, and that the inhabitants of Lefka were entitled to prevent others for six days and six nights in the week from interfering with the water either above or below the junction of the Yedi Bunar and Marakho streams.

The English translation signed by the High Commissioner gave to Lefka the water from the mountain after it had passed the point where the stream rising in Marakho joins the stream called Yedi Bunar, and allowed the inhabitants of Bedula and Modula to take the water before the junction.

The other evidence and the arguments will be gathered from the judgment.

The application was to amend the Turkish portion of the mazbata on the ground that it did not correctly state the decision of the Court.

The Court gave judgment as follows:

This is an application to amend a judgment of the Temyiz Court dated the 28th day of February, 1880, on the ground that it was drawn up in such terms that it did not carry out the intention of the Court.

The application was first made on the 26th day of March, 1902, and on the 28th July 1902, the Court expressed an opinion that it had power to amend a judgment of the Temyiz Court, if it was shewn that there was an error in the way in which it was drawn up; but as it appeared to the Court that the villages of Lefka, Kalapanayoti, Ikou and Modula were interested in the judgment and that those villages were not properly represented before the Court the case was adjourned to enable notices to be served on those villages to appear before the Court and state any objections they wished to raise to the application.

It has been proved that notices were served in the manner directed by us.

Mr. A. Kyriakides appeared for Kalapanayoti and Ikou and said that he had nothing to say.

The village of Modula was not represented except in so far as it was represented by the Advocates for the Applicants.

Mr. Gooding appeared for the inhabitants of Lefka and argued that the application should be refused. He made the following objections:

1. That the application was based on erroneous statements;

2. That the Temyiz Court document purporting to be a judgment is not a judgment, because it appears from Mr. Bovill's report that there was a mazbata previously signed by the five Judges of the Temyis Court and that that was the real judgment, and because Mr. Bovill acted *ultra vires* in drafting a new mazbata; and he said that the first mazbata was verbally communicated to the parties and that from the time it was communicated it was binding;
3. That if the document was a judgment, there was no right to rectify it;
4. That if there was a right to rectify the judgment, no mistake in it was proved;
5. That if there was a mistake the rights of third parties had intervened under the judgment of 1899;
6. That the judgment was the Turkish writing and not the English.

We will now consider these arguments brought forward on behalf of the people of Lefka.

And first we will consider Mr. Gooding's second argument against the application to rectify the judgment, viz.: That the Temyiz Court document purporting to be a judgment is not a judgment, because it appears from Mr. Bovill's report that there was a mazbata previously sealed by the five Judges of the Temyiz Court, and that was the real judgment.

Whether or not a mazbata so sealed would be effective as a judgment must depend upon the Laws and procedure in force at the time when it was sealed.

We will first consider what was the Law and practice in force before the British Occupation.

The Vali was by the Law of 13 Safer, 1275 (Old Destur, edition of 1282, p. 561), responsible if the Courts did not do justice.

His duties with regard to the Courts of Law would seem to have been differently stated in the Law of Vilayets of 29 Shewal, 1287; and by the Imperial Firman of 13 Zilqade, 1292, it seems to be decreed that the executive power was not to intervene in the exercise of the judicial power.

In practice however the executive authorities seem to have kept control over judicial proceedings in Turkey or some parts of it till after the British Occupation.

That this was so with reference to the execution of judgments appears from the telegraphname of the 11th April, 1295, which was subsequent to the date of the occupation.

The following is a translation of the telegraphname so far as it is material:

"Telegraphname written to Mutesarrifliks independently governed "and to Vilayets from the Minister of Justice about civil officials not "interfering in the execution of the provisions of 'Ilams given by the "Courts.

"In consequence of the Courts having been authorised to receive "petitions direct, it has been asked from some places whether the "provisions of judgments which shall be given will be executed by the "Courts, or by the civil officials.

"Whereas the separation of the judicial powers from civil control has "been confirmed by Imperial Khats and the Constitutional Law, civil "officials cannot have any voice or authority in the execution of 'Ilams; "and therefore 'Ilams of decisions whether civil or criminal given by a "Court after they have been attested by the seal of the Court, and the "President and the clerk of the Court have affixed their signatures on a "line parallel to the seal, are executed without there being need for the "confirmation of them by the sign 'Moujebinje' by the civil officials or "any other expression." The telegraphname proceeds to state that execution cannot be delayed except in certain cases therein set out.

It may be that the reason why the law of 13 Zilqade, 1292, was not put in force was that it was necessary for the Vali to continue to exercise control over the Courts in consequence of the difficulty experienced by the authorities in finding competent Judges. (*See* report of Mejellé Commission).

It is clear from the Imperial Firman of 13 Zilqade, 1292, that the Judges were not at that time wholly satisfactory. (*See* Leg. Ott., p. 27).

Also from the Imperial Khat of 23 Shaban, 1293 (5 Leg. Ott., p. 3), it appears that at that date the tribunals did not discharge their duties in such a way as to protect the rights of the public.

It may be that the Valis usurped the power arbitrarily.

It may be that the Laws were not brought into force by publication (as prescribed by the Law of 25 Rebi-ul-Akhir, 1289) in the places where they were not observed. It appears from the circular of Fuad Pasha that the reforms for which the Laws provided were necessarily introduced gradually. (2 Leg. Ott., p. 24).

From whatever cause, it is clear that in Cyprus at the time of the British Occupation the executive did supervise the judgments of the tribunals and that the petitions of suitors were presented to the executive authorities and not to the tribunals direct.

The practice of the Courts in Cyprus at the time of the occupation is given in the official report of the High Commissioner for the year 1879, at p. 4, paragraphs 12 and 13.

"The Plaintiff stated his case on a sheet of paper bearing a stamp "of one piastre and presented it to the Qaimaqam, who, if he approved "it, endorsed it to the Daavi Court and returned it to the petitioner, "who thereupon bore it to the Court . . . ;"

"For the Temyiz Court the same process was performed with the "Mutesarrif;"

"On judgment being given, the sentence, after approval, was handed "to the chief of the police to carry out . . . ."

After the British Occupation the same procedure was followed.

It was found necessary however to place an Englishman in every Court to ensure the proper administration of justice, (paragraph 52 of the report of the High Commissioner for 1879).

The Law XIII of 1879 legalised the presence of the English official and gave him a right to take part in the judgments of the Courts.

A statement of the practice in the Daavi Courts is made by the Commissioner of Larnaca at p. 195 of the Report of the High Commissioner for 1879:

"The native Courts are the Mejliss Daavi, Tijaret, and Mejliss Idaré.

"Judicial relief or assistance is always sought in the first instance by "petition, in any language, addressed to the Commissioner or his "assistant. This is examined, endorsed, and forwarded to the proper "Court or office. Judgment is always given in writing, in a mazbata "(sentence) which the Commissioner has power to confirm or suspend. "The Commissioner or Assistant Commissioner, is empowered to sit as "assessor in all the native Courts, and as a rule in all important cases, "or at the request of one of the parties to a suit, the Assistant Commis- "sioner does so sit."

As to the Temyiz Court, by Sec. 2 of Ordinance IV of 1878 it is enacted that the High Commissioner shall exercise all the authority and functions up to that time exercised in Cyprus by the Vali of Rhodes and the Mutesarrif of Cyprus.

The duty therefore devolved on the High Commissioner of exercising the same supervision over judgments as the Vali and Mutesarrif had exercised up to that date.

At the time when the judgment under consideration was given no judgment of the Temyiz Court could be enforced until the High Commissioner had assented to it. This assent was always given after a report by the English Assessor.

If, as stated in Mr. Bovill's report, there existed any document purporting to be a judgment sealed by the five Judges it could not be enforced because it was not approved. A subsequent judgment in the

same case having been confirmed by the High Commissioner, the former judgment would have no effect.

Moreover if the mazbata sealed by the five Judges differed from that which Mr. Bovill intended, it is clear from Mr. Bovill's report that it was drawn up without consulting him and with knowledge that he differed from it. As Mr. Bovill was entitled to take part in the judgment it would be invalid on that account, unless the High Commissioner confirmed it.

For the above reasons we are of opinion that the document said to have been sealed by the five Judges was not the judgment in the case;

That Mr. Bovill did not act *ultra vires* in drafting a new mazbata;

And that the new mazbata which was confirmed by the High Comissioner was the judgment in this case.

With Mr. Gooding's argument that there is no right to rectify it, we have already dealt in our former judgment. We see no reason to alter the views then expressed by us that we have such power, if a mistake is proved.

We will next take Mr. Gooding's objection that if there is a right to rectify the judgment, there has not been proved to be any mistake requiring rectification.

For the better understanding of the judgment of the Temyiz Court we first set out the judgment of the Daavi Court on appeal from which that judgment was given.

The judgment of the Daavi Court when translated into English is in the following terms:

" A petition submitted to the Commissioner by Sadik Eff., Haji Emin " Eff., Mehmet Said Eff, and Izzet Eff. residents of Lefka, has been " referred to the Daavi Court in which they say that according to the " Hujets of the Sheri Court dated 20 Jemazi-ul-Evvel, 1185, and 21 " Jemazi-ul-Evvel, 1248, the lands in their quassaba have an *ab antiquo* " right of irrigation over the running water rising out of the locality " called Yedi Bunar and the River Marakho for six days and six nights " in the week from the time of the rising of the morning star on Sunday " to the rising of the morning star on Friday, and that the lands of the " inhabitants of the villages of Modula, Bedula, Kalapanayoti and Niko " have a right of irrigation for one day and one night; And that while " they were possessing the same in that way Papa Michaeli Yanni, " Sophocles Tzirgalli, Christodulo Haralambo, Haji Georghi Haji Loizi, " all of the village of Modula, and Haji Economo, Leonida Papa Georghi, " both of the village of Bedula, and Yanni Ktizoudi, Loizo Mukhtari, " Kazamia Haji Liozo, Papa Yanni Haji Michaeli, all of the village of

" Kalapanayoti, and Sava Haji Solomo Loizou and Haji Pieri, both of the
" village of Niko, have opened a channel below the village of Niko and
" have taken possession of the said water without right for the last two
" months; And that therefore the petitioners pray that those persons
" may be summoned and that after trial they may be restrained from
" interfering in that manner and that the channel they have opened be
" closed up and that the inhabitants of the said villages be ordered to
" irrigate their lands and use the water in common as before. The
" parties having been summoned before the Court and Mr. Seager, the
" Commissioner, being present, the above named Plaintiffs were invited
" to state their case and they repeated their claim verbally in the terms
" of their petition.

" Mr. Pascal Constantinides, Vekyl of the above mentioned Defen-
" dants, on being called upon, stated that, other than Marakho and Yedi
" Bunar, there was a large number of springs and sources in their
" properties from which water flowed and that they had cut the waters
" rising from their villages and they had not interfered with the water
" of Yedi Bunar and Marakho differently from their turns.

" Thereupon this Court sent Mr. Hutchinson, Chief Engineer to
" prepare a plan of the said locality, and it appearing from the plan
" which he had made on a visit to the spot, and from his statement, that
" besides the above mentioned water of Yedi Bunar and Marakho, there
" are in the lands of the villages of Modula and Bedula, Kalapanayoti
" and Niko in the vicinity of the Marathasa valley a large number of
" springs and sources from which water flows; and this Court having
" considered the statements of the parties herein; it is resolved that
" inasmuch as the Hujets of the Sheri Court produced by the Plaintiffs,
" the inhabitants of Lefka, are good and valid according to Art. 1821 of
" the Mejellé, the water of Yedi Bunar and Marakho (which Yedi Bunar
" water proceeds from the three directions above mentioned and joins
" the water of Marakho) should flow six days and six nights in the week
" to the inhabitants of Lefka and one day and one night also to the
" inhabitants of the said villages. And this Court grants leave that the
" water which proceeds from any springs, sources and fountain-heads
" other than the springs above mentioned should flow to the lands of the
" inhabitants of the said neighbouring villages. And it is further
" resolved that the channel recently made by them be closed up and that
" Pascal, the Vekyl of the said Defendants, be enjoined accordingly.

" Resolved unanimously, subject to appeal, and communicated to the
" parties on the 8th day of September, 1879."

The judgment of the Temyiz Court is in the following terms: (We
first set out a translation of the Turkish under which the seals of the

Judges are placed. Below the seals and above the signature of Sir R. Biddulph, the High Commissioner, it is written in English.)

Appellant. Pascal Effendi on behalf of the inhabitants of the villages of Bedula, Modula, Kalapanayoti and Niko.

Respondent. Izzet, Ahmet and Mehmet Effendis, and Diran Augustin Effendi, *on behalf of the inhabitants of the qassaba of Lefka* and in their own right.

" It is stated in the judgment of the Daavi Court of Nicosia dated 8th " September, 1879, No. 195, that the Hujets dated 20 Jemazi-ul-Evvel, " 1185 and 21 Jemazi-ul-Evvel, 1248, relating to the water in dispute " between the inhabitants of the above mentioned qassaba and the inha- " bitants of the above mentioned villages being valid documents, in " accordance with the provisions of Art. 1821 of the Mejellé, the Court " has awarded from the water of Yedi Bunar joining the water of Marakho " six days and six nights in the week to the qassaba of Lefka, and one " day and one night to the above mentioned villages, and that the " waters flowing from any fountain-heads, springs, and sources other " than those mentioned have also been awarded to the inhabitants of the " said villages for them to irrigate their lands and possess the said water " accordingly.

" The said decision of the Daavi Court has, after examination by " our Court, been found to be contrary to the provisions of the above " mentioned Hujets and has been set aside as follows:

" Any quantity of the water which (flowing from the mountain towards " Lefka, from whatever source it comes), and any quantity of the water " which (springing out of the place called Marakho and after it has joined " the water of Yedi Bunar), flows down past that point, being the property " of the Respondents, the inhabitants of the qassaba of Lefka, it is " ordered by the majority of the Court, that in accordance with their " Hujets the said water shall for six days and six nights in each week, " that is to say, from the rising of the morning star on Saturday until the " rising of the morning star on the following Friday, flow to the qassaba " of Lefka, and that from the rising of the morning star on Friday to the " rising of the morning star on Saturday, one day and one night, it shall " run to the Respondent villages Modula, Kalapanayoti and Niko; " provided however that, whereas parts of Modula and the village of " Bedula are situated above the point of junction of this water and they " would naturally be unable to benefit from below, they shall use any " waters to be used by them from above before the same reach the point " above mentioned and that they shall possess the same accordingly."

Seal of the Cadi, Esseid Ahmet Neshet.

Seal of Christodulo Economidi.

Seal of Sophocles Lissandrides.

"Temyiz Court, Mazbata No. 12, dated 28th February, 1880.

"*Appellants.* The inhabitants of the villages of Marathassa, Bedula, "Modula, Kalapanayoti and Niko.

"*Respondents.* The inhabitants of Lefka.

"Appealed to the Temyiz Court the judgment of the Daavi of Nicosia. "After setting forth the decision of the Daavi Court based on two 'Ilams "of the Sheri Court the Court of appeal finds that the judgment of the "Daavi Court is not in consonance with the 'Ilams and decides: 'That "agreeably to the effect of the said 'Ilams the water which flows from "the mountain towards Lefka from whatever source it comes shall after "passing the point where the stream rising in the locality called Marakho "joins the stream called Yedi Bunar (the main stream) belong to and be "used by the Respondents (the inhabitants of Lefka) for six days and "six nights (from the rising of the morning star on Saturday morning to "the rising of the morning star on the following Friday morning) in each "week and shall belong to and be used by the inhabitants of the villages "of Modula, Niko and Kalapanayoti during the remainder of the week, "but the inhabitants of Modula who have land situated adjoining any "stream above the junction, and the inhabitants of the village of Bedula "may use the water before it reaches the said junction.

Confirmed
(Signed) R. BIDDULPH,
16th March, 1880. *High Commissioner.*

Now this judgment, as given in Turkish, differs from the judgment of the Daavi Court in this respect. It takes from the villages and gives to Lefka water springing from sources other than Yedi Bunar and Marakho.

There is a slight difference in the wording of the judgments as far as they deal with Yedi Bunar and Marakho, and the wording as to the water springing out of the place called Marakho does not seem free from ambiguity, but it is admitted on all sides that the effect of both judgments (*i.e.*, the Daavi Court judgment and the Turkish version of the judgment of the Temyiz Court is to restrict the user of the water above the junction by the villages of Bedula and Modula to one day in the week.

The judgment therefore is varied in such a way as to give greater benefits to Lefka as regards the sources other than Marakho and Yedi Bunar to the detriment of the other villages.

As the appeal was brought by the villages and there is no indication of an appeal by Lefka, this is not what one would expect.

It is possible however that the appeal was treated as a rehearing of the case, and this therefore cannot be regarded as evidence of any mistake.

In the Temyiz Court judgment as set out above we have seen that there is written at the foot of the Turkish version of the judgment what purports to be an English translation of the judgment, and the confirmation of the judgment by the High Commissioner is written at the foot of the English translation.

Now the English version of the judgment clearly differs from the judgment as rendered in Turkish, and moreover it is clear that the High Commissioner meant to confirm a judgment in the terms set out in English.

Consequently there was no confirmation of any judgment in the terms of the Turkish version, and if there was no mistake it is difficult to see how the judgment could take any effect.

But was there a mistake? that is to say, did the Judges of the Temyiz Court who sealed the judgment mean to seal a judgment different from this Turkish version of the judgment?

If the Judges intended to seal a judgment in the terms now given in the Turkish, however wrongly they may have acted, we cannot rectify the judgment so as to make them say what they never intended to say.

Now we can see what was in the minds of the Judges from statements made by some members of the Court.

Osman Nouri who dissented annexed a statement of his reasons for not having as he says concurred with the Temyiz Court in giving a *decision in favour of the Marathassa inhabitants.*

This cannot apply to a judgment in the terms of the Turkish judgment which he refused to seal, because it gives everything to Lefka.

Again Ali Effendi refused to seal the judgment, and there is no doubt that if he had thought that the judgment gave all they asked to the Turkish inhabitants of Lefka and took from the Christian inhabitants of Marathassa everything for which they are now contending, as the judgment in Turkish does, he would have sealed the judgment.

Sophocles Lissandrides who sealed the judgment has sworn that he did not understand the judgment to be in accordance with the Turkish version.

It is clear from the English interpretation that it was not so understood by the Interpreter. As Mr. Bovill has left on record that he drafted the judgment and the Interpreter would communicate his draft to the Judges, they must, when they agreed to the judgment, have understood it to be to the same effect as the Interpreter understood it.

It seems clear therefore that the Court when they agreed to the judgment by a majority did not understand that the judgment was in the

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terms of the Turkish version and that there must have been a mistake in drawing up the judgment.

There is a further question before we can amend the judgment, viz.: whether we have sufficient evidence to shew what was the real intention of the Court.

We are of the opinion that there is sufficient evidence.

Mr. Bovill's report, the English translation at the foot of the mazbata, and the evidence of Sophocles Lissandrides shew clearly that the intention of the Court was, that the judgment should be in the terms of the English translation to which the High Commissioner gave his assent.

There is the further evidence that from the date of the judgment up to the year 1897, the people of Lefka have never claimed a greater right than they would take under a judgment so worded.

For the above reasons we are of opinion that there is a mistake in the Turkish version of the judgment and that we have sufficient evidence of what the Court intended should be stated in the judgment to enable us to amend it.

As to Mr. Gooding's other arguments it is unnecessary to say much.

If the Turkish is the judgment we amend it. We are however inclined to view the whole document as confirmed by the High Commissioner as the judgment.

If third parties are interested they can apply on behalf of themselves.

As to his objection that this application is based on erroneous statements, he has not pointed out what are the erroneous statements of which he complains.

The amendment as worded by the Advocates for Bedula and Modula perhaps goes too far.

In substance the rectification asked for will be effected by amending the judgement so that the Turkish may agree with the English translation to which the confirmation of the High Commissioner was given.

The effect of this will be that the Temyiz Court judgment gives to Lefka for six days and six nights the right to the water below the junction only, and that as regards the water above the junction this judgment does not in any way affect the rights to which Lefka and the villages of Bedula and Modula, respectively, are entitled as upper and lower riparian proprietors, nor does it prejudice any rights acquired, since the judgment of the Temyiz Court was given, by lapse of time or otherwise.

In this judgment we have confined ourselves to the consideration of what is the true effect of the judgment of the Temyiz Court and have

purposely refrained from entering into any question of what would be the rights of the parties if there were no such judgment.

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. And, taking into consideration the status of Turkish tribunals in olden times, we doubt whether ancient Hujets, which have not been acted upon, are sufficient to establish rights which they purport to confer.

On these points however we give no decision.

The order of the Court is that the judgment of the Temyiz Court given in this action on the 28th day of February, 1880, be amended by altering the judgment as rendered in Turkish so as to correspond with the English version of the judgment written beneath it.

No order as to costs.

[HUTCHINSON, C.J. AND TYSER, J.]

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1902
Nov. 28

H. EKATERINA H. TIMOTHI *Plaintiff,*

v.

POLYCARPO H. TIMOTHI *Defendant.*

COSTS—DISCRETION OF COURT—LEAVE TO APPEAL—RULES OF COURT, 1886 ORDER 21, R. 29—CYPRUS COURTS OF JUSTICE ORDER, 1882, CLAUSE 38.

In directing the payment of costs under Clause 38 of the Cyprus Courts of Justice Order, 1882, the Court must act fairly and reasonably.

Where the direction as to costs is reasonable and fair, an application for leave to appeal under Order 21, R. 29 of the Rules of Court, 1886, will not be granted if the only ground for the application is, that the reason given for the direction is not a good reason.

APPEAL from the District Court of Larnaca.

Action to restrain the Defendant from interfering with a house to which the Plaintiff claimed to be entitled by length of possession.

The Plaintiff was not registered as owner of the house.

At the trial the Court gave judgment for the Plaintiff but refused to make any order as to costs, on the ground set out below, a note of the ground of the refusal being made in the record by the District Court after the notice of appeal was given, and being to the following effect:

" In this Court we generally refuse costs, in cases where the Plaintiff
" brings an action for a declaration of a right to be registered as owner of
" real property, on the broad ground that a man, who has taken posses-
" sion without obtaining registration, knows that when he comes to ask