[WILSON, P., ZEKIA, VASSILIADES AND JOSEPHIDES, JJ.]

1963
Jan. 22, 24,
Feb. 19,
May 20

RODOTHEA PAPA GEORGHIOU,

Appellant-Defendant,

v.

ANTONIS SAVVA CHARALAMBOUS KOMODROMOU,

Respondent-Plaintiff.

RODOTHEA PAPA GEORGHIOU
v.
ANTONIS SAVVA CHARALAMBOUS KOMODROMOU

(*Civil Appeal No.* 4393).

Immovable Property—Prescription—Acquisition of ownership by prescription—Transfer of land—The transferor's period of prescription or part thereof cannot be added up to that of the transferee in case where the transfer is an informal transfer and consequently a void one—Therefore, where a mother gives informally to her daughter a field as dowry, the two periods of prescription cannot be computed together—And unless the daughter establishes a complete period of possession of her own, she cannot acquire ownership by prescription—Cases where the two periods of prescription will be added up.

Arazi land—Acquisition by prescription—The Ottoman Land Code, article 20—*The Immovable Property Limitation Law,* 1886 (*Law No.* 4 *of* 1886), *sections* 3 *and* 4—*For the purposes of prescription the transferor and the transferee are deemed to be one person, so that the period of possession by both should be added up—But in this context the words "transferor" and "transferee" cannot be taken to include informal, void transfers—Under the old law* (i.e. *prior to the enactment of Cap.* 224, post) *and the new law relating to the transfer of immovable property registration is necessary for the validity of the transfer—The Ottoman Land Code, articles* 20 *and* 36—*The Land Transfer* (*Amendment*) *Law,* 1890—*The Immovable Property* (*Tenure, Registration and Valuation*) *Law, Cap.* 224, *section* 40 (1) *and* (2).

Arazi Land—Prescription—Adverse possession—A person adversely possessing a piece of land is not debarred of the right of acquiring ownership thereof even if he acknowledges that he arbitrarily possessed such land—The Ottoman Land Code, article 20 *read together with the Immovable Property Limitation Law,* 1886, (supra) *sections* 2 *and* 3.

Immovable Property—Prescription against registered owner—The period of prescription if not completed by the 1*st September,*

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1946, (i.e. *the day Cap.* 224 *came into force*) *cannot be completed thereafter against a registered owner—Cap.* 224 (supra) *section* 9 *and section* 10, *first proviso.*

Immovable Property—Survey plan—Area of land covered by a registration—How defined—Cap. 224 (supra) *section* 50*—Position prior to the* 1*st September,* 1946*—The Ottoman Land Code, article* 47.

Immovable Property—Trespass—Title deed—Error—A person who has neither a title deed in respect of a given land nor a right to be registered as owner thereof cannot challenge even a trespasser claiming title to that land—Much less can he challenge a person armed with a title deed covering even erroneously the land in question—And the holder of a title deed covering, even by mistake, the disputed land is entitled to an injunction against a person in possession thereof under a claim of title to the ownership but who is neither the owner of that land nor entitled to be registered as such, notwithstanding that the former, i.e. *the holder of the title deed was never in possession of the land in dispute.*

The appellant (defendant) is the owner of a plot of land No. 631 under title deed under registration No. 6555 dated the 28th March, 1955. The respondent (plaintiff) is the owner of the adjoining plot No. 632 under registration No. 6231 dated the 21st September, 1949. A dispute has arisen between the parties as to the ownership of a strip of land 2,500 sq. ft. in extent which was found to be included in the plot No. 632 registered as aforesaid in the respondent's name. The previous registrations of the latter's title deed No. 6231 were Nos. 2343 and 2344 in the name of the father of the respondent. After a local inquiry held some time in 1949, the said two registrations were identified to the survey plan and the new title deed No. 6231 was issued to the father who shortly afterwards transferred the land to his son, the respondent. The registrations of the appellant's title deed No. 6555 were Nos. 2308 and 2309 in the name of her mother for which after local inquiry the new title deed No. 6555 was issued to the mother, who transferred the land to her daughter, the appellant, some time in 1955. The disputed portion of land was being cultivated by the mother at least as far back as from 1915 till 1938 or 1939 when she informally gave the whole field (including the disputed area) to her daughter (appellant) as dowry who as from that date was cultivating the whole field until the present day. The respondent instituted his action against the appellant claiming *on foot* of his aforesaid title deed under registration No. 6231 an injunction restraining the appellant from

interfering with the portion of land in dispute The appellant (defendant) disputed the claim and counter-claimed for an order of the Court directing the registration in her name of the land in dispute on account of (*a*) undisputed adverse possession for fifty years and (*b*) mistake whereby the said portion of land has been included in the title deed of the plaintiff (respondent)

The Immovable Property (Tenure, Registration and Valuation) Law, Cap 224 (which came into force on the 1st September, 1946) provides as follows —

Section 9 : " No title to immovable property shall be acquired by any person by adverse possession as against the Crown or a registered owner "

Section 10 " Subject to the provisions of section 9 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

Provided that nothing in this section contained shall effect the period of prescription with regard to any immovable property 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 "

Section 40 (1) " No transfer of, or charge on, any immovable property shall be valid unless registered or recorded in the District Lands Office

(2) No transfer or voluntary charge affecting any immovable property shall be made in the District Lands Office by any person unless he is the registered owner of such property .

Provided that the executor or administrator of an estate of a deceased person shall, for the purposes of this subsection, be deemed to be the registered owner of any immovable property registered in the name of the deceased."

Section 50 : "The area of land covered by a registration of title to immovable property shall be the area of the plot to which the registration can be related on any Government survey plan or any other plan made to scale by the Director :

Provided that where the registration cannot be related to any such plan such area shall be the area of the land to which the holder of the title may be entitled by adverse possession, purchase or inheritance."

Possessory rights prior to the enactment of the Immovable Property (Tenure, Registration and Valuation) Law, Cap. 224 (*i.e.* prior to the 1st September, 1946) were governed (in the case of lands of Arazi Mirié category) by Article 20 of the Ottoman Land Code (*post*) and by the Immovable Property Limitation Law, 1886 (Law No. 4 of 1886), sections 2 and 3 (*post*). The period of acquisitive prescription was then ten years.

The trial Court found that the disputed area is included in the plaintiff's (respondent's) title deed under reg. No. 6231, dated the 21st September, 1949. To the question whether the period of possession by the mother of the appellant could be added to that of the daughter-appellant, the trial Court answered in the negative inasmuch as the disputed portion possessed by the mother from 1915 to 1938 or 1939 could not be transferred informally to the daughter and, therefore, the latter, having not completed from 1938 or 1939 to the 1st September, 1946 (on which date Cap. 224 (*supra*) came into force) a full period of ten years' possession of her own, was only entitled to the land actually transferred to her by her mother in 1955 under registration No. 6555 (*supra*) which title deed admittedly does not include the disputed area of land. Consequently, the trial Court granted to the appellant (plaintiff) the injunction claimed for. On appeal by the defendant, the High Court (VASSILIADES, J. *dissenting*), upholding the judgment of the trial Court. :

Held, (VASSILIADES, J., *dissenting*),

(1) in our view two are the points of law which fall for decision :

(1) Whether the appellant's mother's period of possession or part thereof over the disputed portion of land might

be added to the period actually possessed by the appellant so that, prior to the 1st September, 1946, the date of the coming into force of the Immovable Property (Tenure, Registration and Valuation) Law, 1946, she would complete the required 10 years' period to enable her to obtain prescriptive right over the disputed land.

(2) Whether the plaintiff-respondent was entitled to the injunction restraining the defendant from interfering with the disputed land notwithstanding that the former was never in possession of the said land and the inclusion of the disputed portion of land in his title deed might as well be due to a mistake.

(II) *As to the first point :*

(1) Possessory rights, prior to the enactment of the Immovable Property (Tenure, Registration and Valuation) Law, Cap. 224 (which came into force on the 1st September, 1946), were governed, in the case of lands of Arazi Mirié category, by article 20 of the Ottoman Land Code (*post*) and by the Immovable Property Limitation Law, 1886 (Law No. 4 of 1886) (*post*), the period of acquisitive prescription then being ten years.

Halis Eshref, commenting on Article 20 of the Land Code, at p. 200, states :

> " The period of possession or abandonment by persons from whom and to whom land devolves and the period of possession by the transferor, and transferee is added up.
>
> As the person from whom and the person to whom the property devolves and also the transferor and the transferee of a property are deemed to be one person the period of possession by both persons should be added."

We have no doubt that this is a correct interpretation of Article 20, but the point in the present case is to find whether the appellant-defendant and her mother could be regarded as " transferee " and " transferor " within the scope of this interpretation.

(2) The words " transfer " and " transferee " " farigh " and " mefroughunleh " are legal terms and, according to Professor Djemaledin, the corresponding words in French are " cédant " and " céssionaire ".

We are inclined to the view that the words "transferor" and "transferee", unless the context otherwise requires, could not be taken to include informal void transfers. The same words, "transferor" and "transferee", occur in Article 36 of the Land Code (*post*).

(3) The transfer of a State land (Arazi Mirié) without the leave of the official was void. The mode of transfer, however, was altered by a Law of 1890, the Land Transfer (Amendment) Law. By section 40 of the Immovable Property (Tenure, Registration and Valuation) Law, 1946, Cap. 224, it was enacted that—

> "(1) No transfer of, or charge on, any immovable property shall be valid unless registered or recorded in the District Lands Office.
>
> (2) No transfer or voluntary charge affecting any immovable property shall be made in the District Lands Office by any person unless he is the registered owner of such property :
>
> Provided that the executor or administrator of an estate of a deceased person shall, for the purposes of this sub-section, be deemed to be the registered owner of any immovable property registered in the name of the deceased."

It is clear from the old and new law relating to the transfer of immovable property that registration in one way or the other was necessary for the validity of the transfer.

(4) In this case the mother, the predecessor-in-title of the appellant was not, as far as the evidence goes, the registered owner in respect of the disputed portion of land and when she made informally a gift of the land possessed by her including the disputed portion as dowry to her daughter, the appellant, in 1938 or 1939, that gift not having been made in accordance with the Law could not be considered to be a transfer in the legal sense. Consequently, the two periods of possession cannot be added up in this case.

(5) (*a*) On the other hand when in 1955 the mother transferred the land registered in her name, which registration did not include the disputed portion, to her daughter (the appellant), that transfer could not comprise the disputed portion on account of section 50 of the Immovable Property (Tenure, Registration and Valuation) Law, Cap. 224 (*supra*).

(*b*) The periods of possession of an area of land by successor and predecessor-in-title can be added up in cases of devolution by inheritance and in transfers where the title deed is not related to a survey plan excluding the area in question, and in such a case the proviso to section 50 (*supra*) will operate and the period of adverse possession by transferor and transferee will then be added up

(6) The first proviso to section 10 of the Immovable Property (Tenure, Registration and Valuation) Law, Cap 224 (*supra*) has been interpreted by this Court in a number of cases and needs no further consideration The period of prescription, if not completed by 1st September, 1946, cannot be completed thereafter against a registered owner and in this case the possession started by the appellant in 1938 or 1939 being incomplete by 1st September, 1946, it cannot be completed after that date against a registered owner, the father of the respondent and later the respondent in this case, by continuing to possess the land in dispute

(7) We are of the opinion, therefore, that whatever possessory rights were vested in the mother of the appellant in respect of the disputed land, those rights did not pass to the daughter either by virtue of the agreement of dowry in 1938 or 1939 or on the strength of the transfer in 1955 which transfer did not include the disputed land

(III) *As to the 2nd point* (1) We think the case of *Hji Georghi Hji Kyriacou and another* v *Kypriano Manuel* (1910) 10 C L.R., p. 15, is to the point There the defendant by a cross-action claimed a right to registration on the ground of prescription but failed to prove his claim On the other hand, it had been proved that the plaintiff's title deed was obtained by a false certificate and on this fact the district court dismissed the plaintiff's claim The Supreme Court, however, allowed the appeal with costs

Tyser, C.J , at page 16 states

> " The Courts are not Courts of Appeal from the Land Registry Office. All that the Court does is this that where by subsistence of any registration injury is done to some one who is entitled to the land, and where the person aggrieved comes into Court to assert his rights as against the person registered, the Court hears his claim and makes a declaration of his rights, and the Land Registry Office acts upon the Court's declaration."

" The Court has no right to take the qochan into its own hands, and, without the qochan's being challenged by any person entitled to the property, to decline to enforce it "

Further down, *Bertram*, J says

" I agree No claim to have this qochan set aside on the ground that it was given on a false certificate was made in the cross-action, and even if it had been made it could not have succeeded, as the defendant was neither herself registered nor entitled to be registered either on the ground of prescription or otherwise "

" It is clear from the case of *Juma* v *Halil Imam* (1899) 5 C L R , 16, that a person who has neither a qochan nor a right to a qochan cannot challenge a trespasser Much less can he challenge a person armed with a qochan And if the defendant is not entitled to challenge the plaintiff's qochan by cross-action, still less can he do so by way of defence "

(2) Perhaps a brief reference might also be made to the case of *Tsikinou Hadji Savva against Kyriacou Georghiou Maroulou* (1907) 7 C L R , p 89 where it was held that in a dispute as to the boundaries between two adjoining proprietors, both claiming under qochans, each of which is consistent with the claim of the person holding under it, and where one of the parties is in possession of the land in dispute, the onus lies upon the party seeking to disturb that possession to establish his claim to the satisfaction of the Court Obviously this case is distinguishable from the present one because the title deeds of both parties are not equally consistent with claim and counter-claim Had the transfer in the names of the litigants been made without reference to plots in a survey plan no doubt this case would have a strong bearing in the present appeal

(3) On the former authority quoted we are of the opinion that even if the registration in the name of the respondents in this case included the disputed portion by mistake he was entitled to have judgment in his favour.

(4) We would, therefore, dismiss the appeal with costs

Appeal dismissed.

Held, *Per* VASSILIADES, J . in his dissenting judgment,

(1) the trial Court found that the boundary of the two plots was never in dispute between the neighbouring holders, until

recently (1960) when a Land Registry clerk discovered that it was not the correct boundary, and thus originated the present litigation.

(2) With all respect, I take the view that the question of adverse possession and prescription do not arise at all in the circumstances of this case. If the survey-plans, prepared as I have stated earlier, did not show the respective plots as they were in fact held and registered at the material time, the error in them was self-evident. And in any case the parties' respective titles, deriving as they do from the original registrations, cannot extend to anything more or anything less than the area of land covered by such original registrations. The disputed triangle could not legally be made to pass from appellant's registration or that of her mother, to the registration of the respondent or that of his father, without the registered parties' knowledge and consent, save under clearly expressed statutory provisions to that effect ; nor could it so pass as a result of an obviously erroneous, in my opinion, misplacing by the drawing-pen of the boundary line from the actual separating bank to an imaginary line ; a line unknown to the registered parties, until discovered by the Surveyor, or by his successor in office, more than thirty-five years later. (1924–1960).

(3) For these reasons, I am of opinion that the appellant, holding a good title for the triangle in dispute by virtue of her registration, should succeed ; and respondent's action based on a surveyor's error, should be dismissed.

Per curiam : The main object of the Immovable Property Limitation Law, 1886, (Law No. 4 of 1886) (*supra*) was in our view to amend the second part of Article 20 of the Ottoman Land Code so that a person who adversely possesses a particular piece of land would not be debarred of the right of acquiring ownership of the land even if he acknowledges that he arbitrarily possessed such land.

Per curiam : Prior to 1946, when Article 47 of the Ottoman Land Code (*post*) was in force in a transfer where the boundaries were indicated, the extent of the area mentioned was not material but what mattered was the area included within the boundaries named.

Per curiam : Before the general Survey and the system of registration with reference to a survey plan was introduced in this country. transfers by qochans or tapou seneds were in

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vogue. These qochans and seneds as a rule did not relate to any survey plan and therefore where a dispute between two neighbouring land-owners in respect of a portion of land falling between their properties arose the only way of deciding the dispute was to find out which of the neighbouring land-owners had undisputed possession over the disputed portion and in such cases possession by transferor and by transferee of the disputed portion could be computed together.

Cases referred to :

Hji Georghi Hji Kyriacou and another v. *Kypriano Manuel* (1910) 10 C.L.R. 15, at p. 16 per Tyser, C.J. and at p. 16-17 per Bertram J., *applied.*

Tsikinou Hadji Savva v. *Kyriacou Georghiou Maroulou* (1907) 7 C.L.R. 89 *distinguished* ;

Sherife Ibrahim v. *Mehmed Souleyman* (1953) 19 C.L.R. 237 ;

Vlassios Panayi v. *Pallikaros* (Civil Appeal No. 4178) October, 1956, *unreported* ;

Thomas Theodorou v. *Christos HjAntoni* 1961 C.L.R. 203 ;

Imbrahim Chakkarto v. *The Attorney-General* 1961 C.L.R. 231 ;

Solomos Stylianou v. *The Police* 1962 C.L.R. 152 ;

Annou Kannavkia v. *Kleopatra Arghyrou* (1953) 19 C.L.R. 187 ;

Enver Chakarto v. *Hussein Liono* (1954) 20 C.L.R. 113 at p. 116 ;

Imbrahim Mehmed v. *HjPanayioti Kosmo* (1884) 1 C.L.R. 12.

Ali Eff. Hassan Eff. v. *HjParaskevou Sava* (1892) 2 C.L.R. 58 ;

Christodoulos Ayiomamitis v. *Nicola Protopapa* (1928) 13 C.L.R. 85 ;

Theodoros Savva v. *The heirs of the deceased Marcos Yanni HjMarcoulli* (1936) 15 C.L.R. 76 ;

Terzian v. *Maroulla Michaelides* (1948) 18 C.L.R. 125 ;

Akil Arnaout v. *Emine Zinouri* (1953) 19 C.L.R. 249 ;

Christos Stokkas v. *Christina Solomi* (1956) 21 C.L.R. 209 ;

Appeal.

Appeal against the judgment of the District Court of Paphos (Demetriou D.J.) dated the 23.4.62 (Action No. 296/61) whereby (a) an injunction was issued restraining defendant

from interfering in any way with the field of the plaintiff situated at Polemi, locality "Ayios Giorghis" reg. No. 6231, survey plan 45/13, plot 632 and (b) the defendant's counterclaim for an order of the Court directing the registration in her name of the said plot of land was dismissed.

St. Pavlides with *F. Galatopoullos* for the appellant.

Chr. P. Mitsides with *E. Ieropoullos* for the respondent.

Cur. adv. vult.

The facts sufficiently appear in the judgments delivered by ZEKIA J. and VASSILIADES, J. On the 20th May 1963 the following judgments were delivered :

WILSON, P. : In the absence of Mr. Justice Zekia, Mr. Justice Josephides will read the judgment of the majority of the Court, prepared by Mr. Justice Zekia ; and Mr. Justice Vassiliades will deliver the dissenting judgment in this case.

JOSEPHIDES, J. : I have had the advantage of reading and discussing the judgment of my learned brother Zekia, J., with him and I am in full agreement. The judgment I am about to read is that of ZEKIA, J.

ZEKIA, J. : The plaintiff (respondent) and defendant (appellant) are the owners of two adjoining plots of land bearing No. 631 and 632 respectively. A dispute has arisen between the parties as to the ownership of a portion of land, 2,500 sq. feet in extent, which lies between the two plots and was found to be included in the plot registered in the name of the plaintiff. Defendant cultivated this disputed portion for several years and counter-claimed its ownership.

The plaintiff on the other hand claimed (*a*) an injunction restraining the defendant from interfering with his land in question and (*b*) £11.250 L.R.O. fees and damages.

Defendant denied the claim and by a counter-claim she sought an order of the Court directing the registration in her name of the disputed portion on account of (*a*) 50 years undisputed adverse possession and (*b*) of a mistake by including erroneously the disputed portion in the title deed of the plaintiff. The claim for damages was also denied.

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Zekia, J.

The facts of the case are as follows :

The plaintiff's property is registered under reg. No. 6231 dated 21st September, 1949, and is of one donum and two evleks in extent (plot 632). Defendant's plot has registration No. 6555 (plot 631) dated 28th March, 1955, and is of two evleks and 900 sq. feet in extent. Both lands are at Polemi village. The title deeds of the litigants are based on a survey plan bearing No. 45/13.

The previous registration Nos. of the title deed of the plaintiff were 2343 and 2344. After a local inquiry, held in 1949, the said registrations were identified to the survey plan and a new title deed, bearing No. 6231, was issued. The father of the plaintiff transferred the land, covered by the new title deed, to his son, the plaintiff, in 1949.

The previous registrations of the title deed of the appellant were 2308 and 2309 for which, after a local inquiry, a new title deed, bearing No. 6555, was issued in the name of her mother who transferred it in the name of her daughter, the defendant, some time in 1955.

The Court found that the disputed portion of land was cultivated by the defendant's mother, at least as far back as 1915 till 1938 or 1939, when the defendant's mother gave the field to the defendant as dowry and from that date the disputed portion of the land was cultivated by the defendant herself until the present day.

There was an earth bank (ohto), before it was interfered with by the plaintiff, between the disputed portion and the undisputed portion of the land covered by the plot of the plaintiff which bank was one foot wide and half a foot high and, according to the Land Registry Officer, whose evidence the Court accepted, the disputed portion is on a lower level, approximately 8" lower than the surface of the remaining portion of the land of the plaintiff. The disputed land was formerly covered by mulbery trees.

The trial Court, having recorded the facts, considered whether the period of possession by the defendant's mother could be added to that of the defendant so that the latter would be entitled to acquire the disputed portion on the strength of long undisputed adverse possession.

The Court held that, inasmuch as the disputed land possessed by Eleni, the mother, could not be transferred verbally, the defendant was only entitled to the land actually transferred to her under reg. No. 6555 which registra-

tion did not include the disputed portion and accordingly the plaintiff was entitled to the injunction claimed for. But, having failed to prove damages, the plaintiff's claim as to damages was rejected. Plaintiff was awarded his costs.

There was ample evidence as to the facts found by the Court and could not further be challenged. It was the points of law involved which were material in this appeal and which have been argued at length before us.

In my view two are the points of law which fall for decision :

(1) Whether the appellant's mother's period of possession or part thereof over the disputed portion of land might be added to the period actually possessed by the appellant so that, prior to the 1st September, Cap. 224, the date of the coming into force of the Immovable Property (Tenure, Registration and Valuation) Law, Cap. 224, she would complete the required 10 years' period to enable her to obtain prescriptive right over the disputed land.

(2) Whether the plaintiff-respondent was entitled to the injunction restraining the defendant from interfering with the disputed land notwithstanding that the former was never in possession of the said land and the inclusion of the disputed portion of land in his title deed might as well be due to a mistake.

As to the first point, possessory rights, prior to the enactment of the Immovable Property (Tenure, Registration and Valuation) Law, Cap. 224, were governed by Article 20 (in the case of lands of Arazi Mirié category) of the Ottoman Land Code and by the Immovable Property Limitation Law, 1886 (Law 4 of 1886).

Article 20 :

> " In the absence of a valid excuse according to the Sacred Law, duly proved, such as minority, unsoundness of mind, duress, or absence on a journey (mud-det-i-sefer) actions concerning land of the kind that is possessed by title-deed the occupation of which has continued without dispute for a period of ten years shall not be maintenable. The period of ten years begins to run from the time when the excuses above-mentioned have ceased to exist. Provided that if the defendant admits and confesses that he has arbitrarily (fouzouli) taken possession of and culti-

vated the land no account is taken of the lapse of time and possession and the land is given back to its proper possessor ".

Section 2 of Law 4 of 1886 reads :

" The period of prescription shall be computed to commence from the time when the right to bring an action for the recovery of property adversely possessed first arose ; "

Section 3 of Law 4 of 1886 reads :

" An action for the recovery of immovable property of which some person in whose name the same has not been registered has had undisputed adverse possession for the period of prescription shall not be maintainable unless the person instituting the action has, during some part of the time, of such adverse possession, prior to the expiration of the period of prescription, been lawfully entitled to be and has been actually registered as the owner thereof ; but such action shall be maintainable where the person instituting it has during some part of the time aforesaid been lawfully entitled to be and has been actually so registered ".

The main object of the Immovable Property Limitation Law, 1886 (No. 4 of 1886) was, in my view, to amend the second part of Article 20 of the Ottoman Land Code so that a person who adversely possesses a particular piece of land would not be debarred of the right of acquiring ownership of the land even if he acknowledges that he arbitrarily possessed such land.

Halis Eshref, commenting on Article 20 of the Land Code, at p. 200, states :

" The period of possession or abandonment by persons from whom and to whom land devolves and the period of possession by the transferor and transferee is added up.

As the person from whom and the person to whom the property devolves and also the transferor and the transferee of a property are deemed to be one person the period of possession by both persons should be added ".

I have no doubt that this is a correct interpretation of Article 20 but the point in the present case is to find whether

the appellant-defendant and her mother could be regarded as transferee and transferor within the scope of this interpretation.

The words "transfer" and "transferee" "farigh" and "mefroughunleh" are legal terms and, according to Professor Djemaledin, the corresponding words in French are "cédant" and "céssionaire".

I am inclined to the view that the words "transferor" and "transferee", unless the context otherwise requires, could not be taken to include informal void transfers. The same words, transferor and transferee, occur in Article 36 of the Land Code which reads :

> "A possessor by title deed of State land can, with the leave of the Official, transfer it to another, by way of gift, or for a fixed price. Transfer of State land without the leave of the Official is void. The validity of the right of the transferee to have possession depends in any case on the leave of the Official, so that if the transferee dies without the leave having been given the transferor (farigh) can resume possession of it as before. If the latter dies (before the leave is obtained) leaving heirs qualified to inherit State land as hereafter appears they inherit it. If there are no such heirs it becomes subject to the right of tapou (mustehiki tapou) and the transferee (mefroughunleh) shall have recourse to the estate of the original vendor to recover the purchase money. In the same way exchange of land is in any case dependent on the leave of the Official. Every such transfer must take place with the acceptance of the transferee or his agent".

The transfer of a State land (Arazi Mirié) without the leave of the official was void. The mode of transfer, however, was altered by a Law of 1890, the Land Transfer (Amendment) Law. By section 40 of the Immovable Property (Tenure, Registration and Valuation) Law, 1946, Cap. 224, it was enacted that—

> "(1) No transfer of, or charge on, any immovable property shall be valid unless registered or recorded in the District Lands Office.
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> (2) No transfer or voluntary charge affecting any immovable property shall be made in the District Lands Office by any person unless he is the registered owner of such property :
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> Provided that the executor or administrator of an estate of a deceased person shall, for the purposes

of this subsection, be deemed to be the registered owner of any immovable property registered in the name of the deceased ".

It is clear from the old and new law relating to the transfer of immovable property that registration in one way or the other was necessary for the validity of the transfer.

In this case the mother, the predecessor-in-title of the appellant was not, as far as the evidence goes, the registered owner in respect of the disputed portion of land and when she made a gift of the land possessed by her including the disputed portion as dowry to her daughter, the appellant, in 1938 or 1939, that gift not having been made in accordance with the Law, could not be considered to be a transfer in the legal sense of the word. On the other hand when she transferred the land registered in her name, which registration did not include the disputed portion, in 1955 that transfer could not comprise the disputed portion on account of section 50 of the Immovable Property (Tenure, Registration and Valuation) Law, which reads as follows :

" The area of land covered by a registration of title to immovable property shall be the area of the plot to which the registration can be related on any government survey plan or any other plan made to scale by the Director :

Provided that where the registration cannot be related to any such plan such area shall be the area of the land to which the holder of the title may be entitled by adverse possession, purchase or inheritance."

The periods of possession of an area of land by successor and predecessor-in-title could be added up in cases of devolution by inheritance and in transfers where the title deed is not related to a survey plan, excluding the area in question, and in such a case the proviso to section 50 will operate and the period of adverse possession by transferor and transferee will then be added up. Prior to 1946, when Article 47 of the Ottoman Land Code was in force in a transfer where the boundaries were indicated the extent of the area mentioned was not material but what mattered was the area included within the boundaries named ; Article 47 reads :

" When there is a question as to land sold as being of a definite number of donums or pics the figure

alone is taken into consideration. But in the case of land sold with boundaries definitely fixed and indicated the number of donums or pics contained within them are not taken into consideration whether mentioned or not, the boundaries alone are taken into account. So for example if a piece of land which has been sold, of which the owner has fixed and indicated the boundaries, saying that they contain twenty-five donums, is found to be thirty-two donums, such owner cannot claim from the purchaser either the separation and return of seven donums of land or an enhancement of the purchase money, nor if he dies after the transfer can his ascendants or descendants prosecute such a claim.

Similarly if the piece of land only contains eighteen donums the transferee cannot claim the refund of a sum of money equal to the value of the seven donums."

Before the General Survey and the system of registration with reference to a survey plan was introduced in this country, transfers by kotchans or tapou seneds were in vogue. These kotchans and seneds as a rule did not relate to any survey plan and therefore where a dispute between two neighbouring land-owners in respect of a portion of land falling between their properties arose the only way of deciding the dispute was to find out which of the neighbouring land-owners had undisputed possession over the disputed portion and in such cases possession by transferor and by transferee of the disputed portion could be computed together. The first proviso to section 10 of the Immovable Property (Tenure, Registration and Valuation) Law has been interpreted by this Court in a number of cases and needs no further consideration. The period of prescription, if not completed by 1st September, 1946, cannot be completed thereafter against a registered owner and in this case the possession started by the appellant in 1938 or 1939 being incomplete by 1st September 1946 it cannot be completed after that date against a registered owner, the father of the respondent and later the respondent in this case, by continuing to possess the land in dispute.

I am of the opinion, therefore, that whatever possessory rights were vested in the mother of the appellant in respect of disputed land those rights did not pass to the daughter either by virtue of the agreement of dowry in 1938 or 1939 or on the strength of the transfer in 1955 which transfer did not include the disputed land.

As to the 2nd point, I think the case of *Hji Georghi Hji Kyriacou and another* v. *Kypriano Manuel* (1910), 10 C.L.R. p. 15, is to the point. There the defendant by a cross-action claimed a right to registration on the ground of prescription but failed to prove his claim. On the other hand, it had been proved that the plaintiff's title deed was obtained by a false certificate and on this fact the district Court dismissed the plaintiff's claim. The Supreme Court, however, allowed the appeal with costs.

Tyser, C.J., at page 16 states :

> " The Courts are not Courts of Appeal from the Land Registry Office. All that the Court does is this, that where by subsistence of any registration injury is done to some one who is entitled to the land, and where the person aggrieved comes into Court to assert his rights as against the person registered, the Court hears his claim and makes a declaration of his rights, and the Land Registry Office acts upon the Court's declaration.
>
> The Court has no right to take the qochan into its own hands, and without the qochan's being challenged by any person entitled to the property, to decline to enforce it."

Further down, *Bertram*, J. says :

> " I agree. No claim to have this qochan set aside on the ground that it was given on a false certificate was made in the cross-action, and even if it had been made it could not have succeeded, as the defendant was neither herself registered nor entitled to be registered either on the ground or prescription or otherwise.
>
> It is clear from the case of *Juma* v. *Halil Imam* (1899) 5 C.L.R., 16, that a person who has neither a qochan nor a right to a qochan cannot challenge a trespasser. Much less can he challenge a person armed with a qochan. And if the defendant is not entitled to challenge the plaintiff's qochan by cross-action, still less can he do so by way of defence."

Perhaps a brief reference might also be made to the case of *Tsikinou Hadji Savva against Kyriakou Georghiou Maroulou* (1907) 7 C.L.R., p. 89 where it was held that in a dispute as to the boundaries between two adjoining proprietors, both claiming under kotchans, each of which is consistent

with the claim of the person holding under it, and where one of the parties is in possession of the land in dispute, the onus lies upon the party seeking to disturb that possession to establish his claim to the satisfaction of the Court. Obviously this case is distinguishable from the present one because the title deeds of both parties are not equally consistent with claim and counter-claim. Had the transfer in the names of the litigants been made without reference to plots in a survey plan no doubt this case would have a strong bearing in the present appeal.

On the former authority quoted I am of the opinion that even if the registration in the name of the respondent in this case included the disputed portion by mistake he was entitled to have judgment in his favour.

I would, therefore, dismiss the appeal with costs.

VASSILIADES, J. : This appeal raises again the important and, in my opinion, still complicated question of the effect of certain statutory provisions in the Immovable Property Law, (Cap. 224) on the rights of ownership upon immovable property.

The facts of the case are clearly set out in the findings of the trial Court, which were well justified by the evidence and, to use the words of my brother Zekia (whose judgment I had the advantage of reading before writing mine) " could not be challenged ". I need not repeat them here except as far as I find it necessary to depict the questions of law arising in this case.

As far back as 1914, the natural formation, possession and cultivation of two adjacent pieces of land, in the vicinity of a Papho village were sufficiently ascertained by the evidence. I make no reference to the ownership, at this stage, as that forms part of the legal question to be resolved in this appeal.

For purposes of identification I shall call these adjacent plots " A " and " B " respectively. They were physically separated by the formation of the ground, " A " being found at a slightly higher level than " B ", and by a bank (ohtos) forming the dividing boundary between the two.

This bank (ohtos) less than a foot high, (8" according to the evidence) could not constitute a very solid boundary between adjacent cultivated lands, over a period of almost half a century ; and yet, according to the Judge's findings,

it was carefully maintained during all these years, as the separating boundary. Stones had been used to keep it up ; trees or vines were planted at points, as usual along boundaries, to preserve it ; and wild grass was always allowed to grow there in order to maintain it as the natural and accepted boundary separating the two holdings.

The trial Court found that this boundary *was never in dispute* between the neighbouring holders, until recently (1960) when a Land Registry clerk discovered that it was not the correct boundary, and thus originated the present litigation.

Plot " A ", somewhat larger in extent than plot " B ", reached on its northern side as far as this bank-boundary ; and plot " B " extended from this bank down to the road which formed the northern boundary of the lower plot. The position can be clearly seen on the small sunprint map affixed on exh. 1, where the higher plot " A " is that under No. 632, and the lower plot " B " is 631.

According to the official evidence, these plots were first registered in 1914/15 when the lower plot " B " was registered under No. 2308 (the land) and 2309 (the trees thereon) in the name of appellant's mother Eleni Christodoulou Theodoki ; and the higher plot " A " was registered under No. 2313 (the land) and 2314 (the trees) in the name of Eleni's uncle Michael Hj Christodoulou Matsangos.

The exact date of Eleni Theodoki's registration for " B " (2308 and 2309) was not given by the Land Registry witness (P.W.1) ; but the date of the registrations for " A " in the name of Michael Matsangos (2313 and 2314) was given as 27.5.1914, which indicates that the registrations for " B " (2308 and 2309) were of about the same time, or a little earlier. (Vide evidence of P.W.1, at p. 11, F.)

The evidence also shows that Eleni Theodoki got " B " from her mother, Marikka Matsangou, the sister of Michael Matsangos who had the first registration for " A " in 1914. (Vide evidence of D.W.7 at p. 35, G and H). If this fact can be of any assistance in this case, it would seem to weigh in favour of similarity in the size of the two plots rather than vice-versa. It would be much more consistent with the size of the plots as actually possessed with the " ohtos " as their dividing boundary than the sizes shown on the survey-plans, which present the brother's plot (632) more than double in extent from that of his sister's (631).

So we have these two adjacent plots " A " and " B ", owned as far back as 1914, by a brother and a sister ; *and we have them registered*, at the Land Registry Office, the former (" A ") in the name of the brother (Michael Matsangos) under registrations 2313 and 2314 ; and the latter (" B ") in the name of the sister's daughter (Eleni Theodoki) under registrations 2308 and 2309.

Shortly after that, we have it, again from the Land Registry evidence (P.W.1, at p. 11 E) that Michael Matsangos' plot " A " (land and trees) was sold at public auction (presumably by his creditors) and acquired by respondent's father, Savvas Charalambous Komodromos, in whose name registration 2313 (for the land) was transferred as registration 2343 ; and registration 2314 (for the trees) went as registration 2344, both of them dated 29.1.1915.

So as far back as January 1915, the *ownership and possession* of these two adjacent plots is clearly and undoubtedly settled, both in actual fact and in law. The higher plot " A " (land and trees thereon) as far as the separating " ohtos " (bank) is owned and possessed by Savvas Komodromos ; while the lower plot " B " (land and trees) from the separating " ohtos " down to the road on the northern side, is owned and possessed by Eleni Theodoki.

The legal rights of these two neighbouring proprietors were registered at the Land Registry Office according to law. And it must be presumed that the original registrations in 1914 were intended to cover, and did in fact cover, the rights of the respective owners, as they existed at the time. Surely it was the registrations that came from the parties' rights ; and not the rights that came from the registration. There is no evidence as to the records made at the time. But such records, if available, must contain the facts upon which the registrations were made.

According to the evidence, the general registration and survey was not effected in that part of the Island, until 1923 (D.W.4 at p. 29, A). There were no survey-plans at the time of these registrations in 1914/15. And registrations 2313 and 2314 in the name of Michael Matsangos must, in my opinion, be held to have been made for his upper plot " A " and his trees thereon, up to the separating " ohtos " (bank) ; while registrations 2308 and 2309 in the name of Eleni Theodoki must be held to have been made for the lower plot " B " and the trees thereon, from the separating " ohtos " down to the road on the other side. These registrations could not rightly have been

made, the former (in respect of the upper plot " A ") to go past the separating " ohtos " which the parties actually treated as their accepted boundary, in order that the registration should reach an imaginary boundary-line ; and the latter (in respect of the lower plot " B ") could not have been correct, if made to cover Eleni Theodoki's land and trees, not from the actual, but from an imaginary boundary, unknown to the proprietors at that time, so as to exclude from her plot the now disputed triangle, adding it to Matsangos' upper plot.

I, therefore, reach the unavoidable, in my opinion, conclusion upon the evidence on record, that the original registrations 2308 and 2309 covered Eleni Theodoki's rights of ownership and possession of the lower plot " B " from the " ohtos " down to the road with the trees thereon ; while registrations 2313 and 2314 which were transferred to registrations 2343 and 2344 on 29.1.15 in the name of Savvas Komodromos, respondent's predecessor in title, covered rights of ownership and possession in respect of the upper plot " A ", as described above ; and no more.

These registered rights, fully recognised and protected by law as it stood at that time, were actually exercised by the respective proprietors of these adjacent plots for practically two generations. And the separating " ohtos " was preserved during all these years, as the accepted boundary dividing the two properties.

About ten years after the original registrations, i.e. about the year 1923/1924, according to the evidence, the general Survey was carried out in that part of the Island, presumably under the provisions of the Immovable Property (Registration and Valuation) Law, 1907. A mere glance at that enactment, both when published as a Bill in the Official Gazette of the 11th January, 1907, and in its final form at p. 431 of Vol. 1 of Sir Stanley Fisher's edition (1923) of The Statute Laws of Cyprus, is sufficient to show that any survey-plans or other records made thereunder, were intended to register existing ownership-rights ; and were not intended to affect or alter such rights in the least.

In the definitions—section, 2, :—

" ' Owner or occupier ' and ' owner ' means the person registered or entitled to be registered in the books of the Land Registry Office as the owner of the property ".

Where ownership-rights were registered, the survey-plans were intended to show the plots as held by the registered owners. As the title of the enactment denotes, its object was to make provision for the registration and valuation of unregistered property ; and this was mainly for revenue purposes. As far as I have been able to ascertain for the purposes of this judgment, neither the original statute, nor any of the amendments thereof, until its repeal by the Immovable Property (Tenure, Registration and Valuation) Law, 1946, now Cap. 224, contain any provisions which could alter the registered rights of the present parties' predecessors in title, as described above.

There can be no doubt, in my judgment, that as far as these plots were concerned, the survey-plans were required by law, and must have been intended, to show these two holdings " A " and " B ", as actually held and registered at the time : the upper plot " A " in respect of registration 2343, marked on the plans as plot 632, to reach as far as the bank as the dividing boundary ; and the lower plot " B " in respect of registration 2308, marked on the plans as plot 631, to reach from the bank in question down to the road.

If the survey-plans were in fact made to show anything different, that must, in my opinion, be held, in the light of the Court findings to have been an error. And in any case the survey-plans could not possibly affect the parties' registered ownership-rights. In whatever manner the plans may have been prepared—and there is no evidence whatsoever as to that—they could not transfer rights of ownership over the triangle now in dispute, from the one adjacent proprietor to the other, who indeed continued to exercise for years after the general survey, their respective rights as they had been doing before.

About fourteen years after the general survey, i.e. in 1938, Eleni's daughter Rodothea, the appellant herein, was married. And her mother gave her the lower plot " B ", as dowery. The gift was not completed by transfer of registration ; but appellant and her husband occupied and enjoyed the property continuing to exercise the registered owner's rights of ownership and possession with the latter's express consent, over the whole plot, from the " ohtos " down to the road, without any dispute or interference from their adjacent neighbours.

Some eight years later, in 1946, the present Immovable Property (Tenure, Registration and Valuation) Law was put in force. This statute (now Cap. 224) originating

in the work of a Committee consisting of three distinguished top-rank Cypriot Officers, well qualified to deal with the matter, (one of the Judges of the Supreme Court, the Solicitor General and the Assistant Director of Land Registration and Surveys) was intended to codify and bring into line with current concepts, the law governing property-rights in Cyprus. But it was not intended in any way to transfer registered rights from one person to another.

The Committee's recommendations, put in a draft Bill comprising no less than 433 clauses (which indicates the scope and volume of the work) were the origin of more than one subsequent enactments, including the present Cap. 224. A perusal of the Objects and Reasons which accompanied the publication of this statute as a Bill, in the Official Gazette of the 11th April, 1944 (No. 3109 at p. 111) and of the Objects and Reasons published with the original Bills in the Gazette of the 28th February, 1939 (No. 2708 at p. 191) leave no room for doubt as to the intended effect of this statute on existing rights.

In 1949, registrations 2343 and 2344 were transferred by Savvas Komodromos to his son, Antonis Komodromos, the respondent-plaintiff in the present appeal. And in 1955, registrations 2308 and 2309 were transferred by Eleni Theodoki to her daughter Rodothea Papa Georghiou, the appellant-defendant herein. Both these transfers were made by gift from father to son and from mother to daughter ; and according to the Land Registry Officer's evidence, they were both effected after a local enquiry by the appropriate Land Registry Official who identified the respective registrations to the properties as held and existing at the time ; and who caused the two registrations, in each case, to be amalgamated into one registration to cover both land and trees. Thus his father's registrations 2343 and 2344 went to the respondent as registration 6231 ; and her mother's registrations 2308 and 2309 went to the appellant as registration 6555. (*Vide* evidence of P.W. 1 at p. 11, F.G.).

No error was discovered regarding the boundary separating the two plots on these two local inspections. Plaintiff's title (exh. 3) makes reference to file No. 1062/49, and defendant's title (exh. 4) makes reference to " D.g. 714/54 ", which I suppose contain records of the action taken for the amalgamation of the two old registrations into the single present registration in each case. But such information was not made available to the Court. There is nothing in the

Court record to suggest that on either of these two occasions, the parties were informed of any difference between the Land Registry plans and the holdings as actually possessed.

In 1955, the respondent planted his plot with vines ; and in connection with that cultivation a dispute arose for the first time as to the boundary separating these adjacent plots. The evidence is conflicting as to what exactly happened on that occasion. But in 1960, the respondent applied to the Land Registry Office under Application No. 1804/60 for determination of that boundary-dispute. A local inspection followed in October, 1960, by the Land Registry witness in this case (P.W. 1 at p. 10 B) who identifying the plots as against the relative survey-plans, discovered that the boundary separating the two plots according to the survey-plans, was not the long-existing " ohtos " which had been the accepted boundary during all these years ; but it was line AB on Exhibit 2, a fast and clear line on paper, but a purely imaginary line on the land, which cut off a triangle of 2,500 sq. ft. from appellant's lower plot " A ", adding it to respondent's upper plot " B ". The parties were officially informed accordingly, as per exh. 1 on the 7.1.1961. Hence this action.

The learned trial-Judge took the view that as there has been no appeal against the Director's decision in exh. 1, and as there was no evidence called to prove any mistake in the plans, he was bound to hold that the respective registrations of the parties covered the plots as shown on the survey-plans ; and therefore the question which he had to determine was whether the appellant could defeat respondent's title on the disputed triangle, by her possession, coupled with that of her mother, for the prescriptive period. He thus embarked on the question of prescription, which he felt bound by previous decisions, to resolve in favour of the respondent.

With all respect, I take the view that the questions of adverse possession and prescription do not arise at all in the circumstances of this case. If the survey-plans, prepared as I have stated earlier, did not show the respective plots as they were in fact held and registered at the material time, the error in them was self-evident. And in any case the parties' respective titles, deriving as they do from the original registrations, cannot extend to anything more or anything less than the area of land covered by such original registrations. The disputed triangle could not legally be made to pass from appellant's registration or that of her

mother, to the registration of the respondent or that of his father, without the registered parties' knowledge and consent, save under clearly expressed statutory provisions to that effect ; nor could it so pass as a result of an obviously erroneous, in my opinion, misplacing by the drawing-pen of the boundary line from the actual separating bank to an imaginary line ; a line unknown to the registered parties, until discovered by the Surveyor, or by his successor in office, more than thirty-five years later. (1924—1960).

For these reasons, I am of opinion that the appellant, holding a good title for the triangle in dispute by virtue of her registration, should succeed ; and respondent's action based on a surveyor's error, should be dismissed.

As the judgment of the trial-Court, however, turned (*a*) on the Director of Lands and Surveys' decision in exh. 1, and, (*b*) on the question of prescriptive title, upon which this appeal was mainly argued before us, I propose to deal with both these points, considering their importance, in our law, as this case well illustrates.

There is no suggestion that the rights of the parties in this action are governed by any law other than the provisions of the Immovable Property (Tenure, Registration & Valuation) Law, Cap. 224, as in force at the material time, properly interpreted and applied. I am mentioning this with reference to the provisions of the amending Law No. 3 of 1960.

The Director's " decision " upon which the trial-Court's judgment rests, regarding the question whether the triangle in dispute is covered by plaintiff's title, is contained in exh. 1, and is based on the provisions of sect. 58. From this " decision ", communicated to the litigants in Jan. 1961, there was no appeal, the learned trial-Judge says in paragraph 3 of his judgment (at p. 43) ; and then he proceeds :—

> " The title deeds of both plaintiff and defendant were traced as far back as 1915 and 1914 respectively. Prior to the transfer of the respective title-deeds in the name of the litigants a local enquiry was held and the registrations were identified to the survey plan."

The Land Registry witness from whose evidence this position is taken (P.W. 1, at p. 11) stated that on the 4th of October, 1960, when he carried out the local inspection in connection with plaintiff's application 1804/60 for the boundary dispute, he did not go into the origin of the titles ; nor into the origin of the survey-plan.

" I could not examine on that day, (the witness said at p. 11.D) anything else but the boundary dispute, and in what title the disputed portion was included."

The same witness said :

" Both above mentioned titles are based on the survey-plan No. 45/13 (at p. 10, C.D.).

I prepared a plan which was sent to Chief Lands and Surveys Officer at Nicosia for checking purposes and his decision to be recorded. I produce the plan and decision, exh. 1 ; and also another plan I prepared on which Chief of Lands and Surveys based his decision in exh. 1. Put in, exh. 2 " (at p. 10. D.E.)

. ....

" I never know of any mistake made by the survey " (at p. 11.B).

As far as I can read this evidence, and the judgment based upon it, the position it creates is this : A Land Registry clerk who knows of no mistake ever made by the survey, (and this, in my opinion, indicates the extent of his knowledge) inspects the place in connection with the application under sect. 58 for the boundary dispute. There he merely applies the survey-plan to the land, believing that he cannot examine anything else. He finds that the parties hold and possess the property according to a natural boundary, and not according to the line of the survey-plan which, on the land, is purely an imaginary line ; and which creates a difference in the form of a triangle of no less than 2,500 sq. ft. A difference not existing until then. Without going into the origin of the parties' titles ; or the origin of the survey-plan ; or the circumstances which gave rise to this difference between possession and survey-plans, the clerk puts his findings on his own plan which he submits to the Chief of Lands and Surveys at Nicosia for checking and for a " decision " under sect. 58. Then a " decision " is made according to the plan submitted, which is sent to the parties (exh. 1) signed by someone " for the Director of Lands and Surveys." And upon this " decision " the trial-Court bases its judgment regarding the parties' title on the triangle of land now in dispute.

I have no doubt in my mind that it was not the object of the legislator to introduce this as a manner for the

determination of property-rights when he enacted sect. 58 of the Property-Law ; nor is it, in my opinion, the effect of this section when properly applied.

I have, earlier in this judgment, made reference to the work which is the source of the present Immovable Property Law, Cap. 224. Its scope was very wide ; and the object of its provisions must be sought in the different sections, read as part of the whole enactment against the background of its origin. Sect. 58, which I do not find it necessary to insert here verbatim, was in my opinion, intended to provide a way simpler and less expensive than ordinary litigation, for determining " in the first instance ", boundary disputes of registered land. Where exactly the boundary line of registered property lay, in cases where that was the only matter in dispute. It was not intended to give the Director power to determine in the summary and unorthodox manner provided in the section, ownership-rights, based on title and possession for the period of prescription such as the rights constituting the dispute in this action.

In *Sherifé Ibrahim* v. *Mehmed Souleyman* (1953) 19 C.L.R., 237 these provisions in the Immovable Property Law (then Cap. 231 ; sect. 56) were considered by the Supreme Court of the then Colony of Cyprus, on appeal. There, same as in this case, the dispute was whether certain land claimed by the plaintiff-respondent as part of " plot 30 of the survey-plan " had in error been registered as part of " plot 29/1, that is to say as part of the defendant's land."

> "We consider that the kind of dispute to which sect. 56 applies (now sect. 58) is one in which the boundary is described in the title-deed or delineated on a plan, and the dispute is as to where the physical boundary should actually run on the land so as to conform with the deed or the plan. It does not apply where there is a dispute as to whether the description in a deed or delineation in a plan is correct or not."

Upon that view of section 56 (now 58), the case was sent back to the District Court, to determine the issue whether there was an error in the registration. In the present case, the question was whether there was error in the survey-plan. The trial Judge, rightly in my opinion, went into that question ; but he decided it upon the view that there was no evidence of such an error. I have already stated the reasons which lead me to the con-

clusion that the evidence of possession at the time, and long before the survey-plan, fully establishes the error complained of by the appellant-defendant.

In *Vlassios Panayi* v. *Pallikaros* (Civil Appeal 4178, October 1956, unreported) the dispute was, same as in this case, over a small triangular piece of land between the yard of the plaintiffs and the yard of the defendant. Both sides were registered for their respective plots, which were marked on the survey-plan. When a dispute arose between the parties as to the dividing boundary, the Land Registry official who inspected the place under the provisions of section 56 (now 58) drew the boundary-line on the basis of the survey-plan, giving the defendant a triangle which had been in the possession of the plaintiffs as part of their yard. The defendant relying on his title as identified on the spot according to the survey-plan, sought to fence the triangle into his yard as land covered by his title. The plaintiffs relying on their possession brought the matter to Court, in the form of an action, where the defendant challenged the claim by virtue of his title.

The trial Court, finding against the plaintiffs on the issue of possession, determined the case upon defendant's title as identified on the spot according to the survey-plan. On appeal, the trial Court's judgment was reserved on the ground that this was not a " boundary dispute " under section 56 (now 58) ; and that the plaintiffs had sufficiently established a prescriptive title on the triangle in dispute.

> " In our view (the Court of Appeal say at p. 4 of their judgment) the evidence establishes that for the last 15 years before the 1st September, 1946, the line A.B. had been a *de facto* boundary and had been treated by both parties to this dispute as the boundary between their plots ; it was only in 1953, when the defendant found that under his registered title he could claim the line A.C. as his boundary, that he decided to oust the plaintiffs from the land in dispute ".

Earlier in their judgment (at p. 2) the Court of Appeal say :

> " The real issue in this case is whether or not the plaintiffs have obtained a prescriptive right to have the boundary of line AB. It is difficult in these circumstances to understand the statement in the learned President's judgment—
>
> > ' I am inclined to take the view that the dispute between the parties is not more than a boundary dispute within section 56 of the Immovable Property Law '."

In my opinion this case presents so many points of similarity to the case in hand, as to show without further comment from me, the approach adopted by the Supreme Court to this kind of dispute, after the enactment of the Immovable Property Law, now Cap. 224.

As to the evidential value of a physical boundary in this type of cases, I shall only cite with respect the comment of my brother Zekia J. in *Thomas Theodorou* v. *Christos HjAntoni* 1961 C. L. R. 203 p. 208.

> " The natural boundary might be of immense help in ascertaining an error in the original registration, or in a boundary dispute ".

In deciding the question whether the difference between the survey-plan and the parties' actual possession, was due to a Land Registry error, the trial Judge was obviously affected by the " decision " of the Director in exh. 1. That " decision " was, apparently made upon the plan prepared in the circumstances stated by the Land Registry witness (P.W.1) as set out earlier in this judgment. One needs only read exh. 1 in the light of the evidence in the case, to appreciate the value of that " decision ". In my opinion, this was not a way in which the parties' rights on the triangle in dispute, or the correctness of the survey-plan on which this case was decided, could be determined at the time.

In *Imbrahim Chakkarto* v. *The Attorney-General* 1961 C. L. R. 231 the effect of certain constitutional provisions on the part of the Immovable Property Law (Cap. 224) dealing with these departmental " decisions " of the Director of Lands and Surveys, was considered at p. 4 of the judgment. And since then, the effect of Article 188 of the Constitution on statutes kept in force in the Republic (one of which is Cap. 224) was further and more fully considered in *Solomos Stylianou* v. *The Police* 1962 C. L. R. 152.

In my judgment, therefore, it was not only open to the trial Judge to determine in this action the question of the alleged error in the Land Registry records concerning the parties' title to the triangle in dispute, upon the evidence before him as a whole, (and not upon exh. 1 alone) but it was the constitutional right of the litigants to require him to do so.

I shall now proceed to deal as shortly as I can, with the question of the prescriptive title claimed by the appellant upon the disputed triangle. To do so, I must assume (against the weight of the evidence on record) that the triangle in question is correctly covered by respondent's registration, 6231 ; and that appellant's rights are not registered. Otherwise the question of prescription, in my opinion, does not arise. I must further assume that the land, prior to the enactment of the present Immovable Property Law in 1946 (now Cap. 224) being cultivable land outside the village, belonged to the category of arazi-mirié, rights of ownership and possession over which, were governed by the Ottoman Land Code.

Arazi-mirié lands, according to Article 1 of the Land Code, are " Crown lands belonging to the State Exchequer ". (Ongley's Translation, London Ed. 1892, p. 1). The nature of the tenure is given in Article 3. It is a right to possess, granted by the appropriate government official, in exchange for a fee. It was granted for purposes of cultivation (Article 9) which brought in revenue to the State, mainly in the form of tithe. (Articles 127 et seq ; 25 : Fiscal Regulations at p. 161). It was held under a registered title-deed (Tapu sened) delivered by the Official to the grantee. (Article 8).

By virtue of his " Tapu sened " the holder protected and enforced his right of possession by taking legal action in the appropriate Court. But the law of the State declined to lend protection to the indifferent holder who neglected or failed to take the proper steps to protect his right of possession within the time specified by law. Article 20 provided that " actions concerning Tapu land which has been held for ten years without opposition, will not be heard without one of the legal disabilities, such as minority, madness, force and being absent in a distant country, having been proved according to the Sheri .... But if the defendant admits having unlawfully seized and cultivated land, attention will not be paid to the lapse of time, and possession of the land will be taken and be given to the owner ".

I have set out verbatim the material part of Article 20 as it constitutes the ground upon which the legal right known as prescriptive-title to " arazi-mirié " land, developed in our law during the first sixty-eight years of the British occupation of the Island ; until the enactment of the present Immovable Property Law, Cap. 224.

In *Annou Kannavkia* v. *Kleopatra Arghyrou* (1953) 19 C.L.R., p. 186 at p. 187 where one of the matters for

decision was defendant-respondent's claim for a prescriptive title on a piece of arazi-mirié land, Hallinan, C.J. is reported to have said :

" It has long been the practice in these Courts to treat Art. 20 of the Ottoman Land Code not merely as a statutory limitation providing a defence to an action brought against a person in long possession, but as giving to the person in long possession a right to claim a title by prescriptive right."

I shall only add a word here to underline the distinction (at least in the translated text) between land " unlawfully seized " in Art. 20, and land " arbitrarily taken possession of ", in Art. 14 dealing with trespass. And bring to memory, in this connection, the conditions which, in those times, gave rise to " unlawful seizures " by persons wielding power in some way or another, as distinguished from the merely " arbitrary " action of an ordinary trespasser.

So ten years possession by a person not entitled thereto, without opposition by the holder of the sened-rights, and without legal action on his part within the time specified by law, to recover possession of the land, rendered (save for the exceptions) the holder's rights unenforceable against the person in possession as his (the holder's) action " would not be heard." Thus the law, indirectly, recognized to the person in possession the prescriptive right to continue his occupation and use of the State-land, which in the possessor's hands produced the title and other incidental public revenue. " Arazi-mirié did not give, as mulk did, an absolute title to property, but only a usufruct subject to the paramount title of the State ; and the State which received taxes from arazi-mirié tended to protect those in possession who would keep the land in cultivation." (*Enver Chakarto* v. *Hussein Liono*, 1954 ; 20 C.L.R. p. 113 at p. 116). And it may perhaps, be of interest to note at this point, that the period of prescription under Art. 20 of the Land Code, is considerably shorter than that required to render most other civil rights (including ownership of immovable property) unenforceable by action, under the Ottoman Civil Law (The Medjellé) art. 1660 of which sets the period of limitation at fifteen years.

Against this historic background, I shall now try to follow in big strides of time, the development of the prescriptive title to property in our law.

In *Imbrahim Mehmed* v. *Hj. Panayioti Kosmo* (1884) 1 C.L.R. p.12 the Court of Appeal considered the provisions of Article 20. The defendants had had uninterrupted pos-

session for ten years of lands registered in the names of other persons. Both the District Court and the Court of Appeal held that the defendants had acquired a valid title to the land by prescription, although they had not been registered as possessors during their ten years' occupation. The Court of Appeal were fully conscious of the importance of the question raised in that case, as they expressly say at p. 14 where they stated the question for decision. After dealing with the Turkish text of Article 20, as well as French and Greek translations, the Court's judgment reads : (at p.. 15, middle) :

> " It was contended on behalf of the appellant that there can be no possession which the law will recognize without the consent of the Government, of which the " Tapu " is the ordinary evidence, having been obtained, and that any person who has taken the actual possession of land is a mere intruder ; but Article 78 seems to suppose the case of a person acquiring by simple possession for ten years, the legal right to possession as against the Government, and we see no reason why there should be any distinction in principle between the possession which gives a prescriptive title as against the Government and the possession which gives a title against a private individual. For these reasons we are of opinion that the judgment of the District Court was right and must be affirmed. We went to Morphou and ascertained that the report of the Director of Survey was quite correct and that the whole of the lands held by the defendants were within the boundaries of the ' mera ' described in the plaintiff's ' Tapou sened ' " (registered title).

About two years later, Law 4 of 1886, cited as the Immovable Property Limitation Law, was enacted (with the advice of a partly elected and partly official Legislative Council during this period) " to amend the Law as to the acquisition of title to immovable property by adverse possession ".

The enactment as found at p. 422 of Fisher's edition of the Statute Laws of Cyprus (1923) is short and, in my opinion, clear in both its object and effect. Section 1 defines four relative expressions ; section 2 settles how the period of prescription is to be computed ; section 3 makes it necessary for the person instituting an action for the recovery of possession to have the property registered in his name prior to the institution of his action,

if he claims to be lawfully entitled thereto ; otherwise his action shall not be maintainable. And, moreover, makes it necessary for the claimant to obtain the registration to which he claims to be entitled (by inheritance, private purchase or any other manner whatsoever) before expiry of the period of prescription ; that is to say while his title was still good, not having been destroyed by the undisputed adverse possession of the person actually in occupation (the would-be defendant in the action) for the full period of prescription. And this for the obvious reason, that if the claimant has not taken the necessary steps to register his alleged title before expiry of the period of prescription, he has lost such title (even if he had a good one) to the person in possession, who on completion of the period of limitation set by law, shall have acquired (according to the judgment in *Imbrahim Mehmed* v. *HjPanayioti Kosmo*, *supra*) a legal right to the possession of the land, i.e. a good prescriptive title to the property. Section 4 then follows to settle the position of the person in possession, who having acquired a prescriptive title to the property, should now take steps to have it registered in his name, as once so registered, no action " shall be maintainable against him ", even by a registered claimant.

The remaining two sections 5 and 6 deal with actions by Religious Foundations " until the passing of a special law " ; and with the position of absentees regarding the running of prescription against them. They are immaterial in this case. The law, in short, settles questions connected with prescription ; and makes registration necessary before the institution of an action for possession against the person in occupation.

About six years later, in 1892, the question of prescriptive title under Article 20 of the Land Code, now subject to the Immovable Property Limitation Law (4/1886) was again before the Supreme Court on appeal in *Ali Eff. Hassan Eff.* v. *HjParaskevou Savva* (2, C.L.R. p. 58) where *Imbrahim Mehmed* v. *HjPanayioti Kosmo* (*supra*) was considered and applied. Notwithstanding registration of the property in the debtor's name, the Court held that her creditor could not sell the land in execution of his judgment, as the debtor's daughter to whom the property had been given by the debtor as dowry, had, in the meantime, acquired a prescriptive title thereto. And the property was exempted from the order for sale.

Taking now a stride of more than twenty years in the course of time, and passing by The Immovable Property Registration and Valuation Law, 1907, which I have al-

ready discussed, I come to the period when the respondent's predecessors in title were first registered: 1914/1915. I say the respondent's, because I am proceeding on the assumption that the appellant and her predecessors in possession, were never registered ; at least never registered for the triangle in dispute.

Michael Matsangos gets registrations 2313 and 2314 for the upper plot and trees (including the disputed part, I assume) which his creditors sell at public auction, where respondent's predecessor, Savvas Komodromos, acquires the property under registrations 2343 and 2344. The latter (Komodromos) now enters into possession but, according to the findings of the trial Court, he occupies and cultivates the upper plot " A " as far as the ' ohtos '; and does not dispute or disturb the possession of appellant's mother, Eleni Theocli, who continues to possess the triangle now in dispute up to the ' ohtos '.

This state of affairs goes on, according to the Court findings, for a number of years, and actually exists in 1923/24 when the official surveyor prepares the General Survey plans. The surveyor does not show on his plans the plots in question as they were in fact occupied at the time, but he shows them (we assume) as registered. Nevertheless, Komodromos (respondent's predecessor in title) continues to occupy as far as the ' ohtos ' although his registration, identified with plot 632 on the survey-plan, covers the triangle now in litigation ; while Eleni Theodoki (appellant's mother) continues adversely to possess the triangle in question, undisturbed by her registered neighbour.

The force which the Courts recognised in possessory rights during this period is shown in the judgment of the Chief Justice in *Christodoulos Ayiomamitis* v. *Nicolas Protopapa* (1928) 13 C.L.R. p. 85. That was an action where the plaintiff as registered owner of certain *arazimirié* lands sought to have defendant restrained from interfering with his property. Defendant pleaded prescription and counterclaimed to have plaintiff's registration set aside. The District Court held that defendant " was entitled to obtain a title for the land ", and ordered the plaintiff's registration to be set aside, and that the land should be registered in the name of the defendant. After hearing argument against that decision, from one of the most distinguished local lawyers of that time, a strong Bench in the Supreme Court, if I may say so with all res-

pect, upheld on appeal the judgment of the District Court resting on defendant's possession which gave him a prescriptive title.

In volume 14 of the C.L. Reports covering the period 1929–1934, I found no case dealing with prescriptive title to property. But in the next volume of the Reports, vol. 15, the case of *Theodoros Savva* v. *The heirs of the deceased Marcos Yanni HjMarcoulli* (1936) 15 C.L.R., p. 76 is a clear authority to the effect that " the words (an action) ' cannot be heard ' occurring in art. 1660 of the *Mejellé* (dealing with prescription) coupled with the commentary of Ali Haidar, made it clear that it was the jurisdiction of the Judge to hear the action that was taken away, and not as in English law, the interposition of a mere time bar." This would be equally the effect of the same words in Art. 20 of the Land Code ; which, in my opinion, supports the proposition that the possessor's prescriptive title to the property and his right to be registered, prevail in law, over the registered title of the person whose rights have been prescribed.

This was the position, as far as I have been able to ascertain, when the law pertaining to immovable property was being considered by the Committee set up by Government for that purpose, to which I have already referred. In paragraph 7 of the Objects and Reasons published with the relative Bills by the Attorney-General who was then the adviser of the Governor in the exercise of his function as the legislative authority in the country, one reads :—(Cy. *Gazette* 2708 of the 28.2.39 at p. 191)—

> " The acquirement of title to immovable property by adverse possession is put an end to as against the the Crown and a registered owner. Subject to this, a person who has been in undisputed adverse possession of immovable property without interruption for the full period of thirty years is deemed to be the owner of such property and is entitled to have the property registered in his name . ."

This clearly indicates that the legislator at that time, intended " to put an end " to the acquirement of title to immovable property by adverse possession for the prescriptive period of ten or fifteen years which the law in existence recognised.

In paragraph 30 of his note, at p. 194, the Attorney-General adds :—

> " In view of the far reaching nature of these Bills it is

recognised that their provisions may require to undergo modifications in the light of any constructive criticism which may be received concerning them."

Indeed these Bills did not take their final form until about five years later, when the Immovable Property (Tenure, Registration and Valuation) Law was published as a draft Bill in the official Gazette No. 3109 of the 11th April, 1944, at p. 87.

In his Objects and Reasons, which throw useful light, in my opinion, on the present statute, the Ag. Attorney-General who had been the Solicitor-General when this legislation was being prepared, at p. 111, under the heading : Part II, Tenure, has this to say :—

" The period of prescription which had been set at 30 years under the previous Tenure Bill, remains the same but provision is made *saving the rights* of persons whose adverse possession *began* before the enactment of the new Bill ; *in their case the periods of prescription will be computed on the old basis.*" (I underlined here the words which, I think, clearly indicate the intention of the legislator on this point.)

The following year, 1945, the present statute was enacted which came into force on the 1st September, 1946. It was Cap. 231 in Sir Harry Trusted's edition of the Statute Laws of Cyprus, in 1950 ; and it is now Cap. 224 of the present revised edition of the Statutes published in 1959. The statute has had, since its first publication, numerous amendments in the light of experience ; and it may well require more in future.

In Part II dealing with Tenure, section 9 (section 8 in Cap. 231) provides :—

" No title to immovable property shall be acquired by any person by adverse possession as against the Crown or a registered owner."

And the following section 10 (section 9 in Cap. 231) provides :—

" Subject to the provisions of sect. 9 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 :

Provided that nothing in this section contained shall affect the period of prescription with regard to any

immovable property 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."

And then follows a second proviso immaterial in this case. Here also I have underlined the parts which, in my opinion, point to the correct interpretation of the section. This is how the legislator put into the statute his intention to do entirely away with prescriptive title against the Crown or a registered owner ; to abolish it from the law. And to introduce in lieu thereof, the new idea of the " deemed " ownership in the person in possession " or by those under whom he claims " for a full period of thirty years. No longer a prescriptive title by adverse possession.

After the coming into operation of the new Property-Law a claim partly resting on prescriptive possession was discussed in *Terzian* v. *Maroulla Michaelides* (1948, Civil Appeal 3810 reported in 18, C.L.R. p. 125). But as the facts in that case are different, I shall move on to the next case in the reports, bye-passing also *Annou HjTofi Kannavkia* v. *Kleopatra Arghyrou* decided in February 1953 and *Sherife Ibrahim* v. *Mehmed Souleyman* decided in April, 1953, to which I have already referred earlier in this judgment.

The force of prescriptive rights in a defendant in possession, over the registered rights of the plaintiff in a disputed portion of adjacent lands included in plaintiff's registration, preserved by the first proviso to section 9 (now section 10) was considered in *Akil Arnaout* v. *Eminé Zinouri* (1953) 19 C.L.R. p. 249. The plaintiff by purchase in 1950, became registered as the owner of the plot which included the portion in dispute. The defendant proved that she was in possession of the disputed portion for about 30 years. In an action for possession in 1952, to enforce his registered title under the Immovable Property Law as a purchaser for value, the plaintiff failed.

> " On the evidence before us in this case (one reads in the Chief Justice's judgment at p. 252) it is quite clear that if the purchaser had made reasonable enquiry he would have at once discovered that the respondent was, and had for many years been in possession of the piece of land in dispute ".

Same as in this case, the dispute in that case had been earlier determined by the Director of Lands and Surveys on the basis of plaintiff's title. And one of the grounds of plaintiff-appellant's case was that the Director's decision had not been appealed against under section 75 (now section 80) of the Immovable Property Law (now Cap. 224) and thus became final. But after reference to the decision in *Sherifé Ibrahim* v. *Mehmed Souleyman* (*supra*) that ground was abandoned in the course of the appeal, as one reads in Mr. Justice Zekia's judgment at p. 254. The learned Justice then proceeds to deal with the rights of a *bona fide* purchaser for value, regarding which he has this to say at p. 256 :—

> " It seems to me that the general rule that a vendor cannot convey a better title to the purchaser than that of his own has been vigorously applied in land transfers under the Ottoman Land Laws. I do not think under the English Law a different rule is obtaining".

This throws useful light in the present case regarding the title which the respondent acquired from his father by the transfer of 1955, upon which he now claims the triangle in dispute.

I now come to *Enver Chakarto* v. *Hussein Liono* (1954) 20 C.L.R. p. 113 which seems to me to have originated the idea that unless the full period of prescription has run prior to 1st September 1946 when the Immovable Property Law (now Cap. 224) came into force, the person in possession cannot acquire a prescriptive title against a registered owner by adding the period of his possession prior to the statute, to that of his continued possession after September, 1946.

> " The main question which falls for decision in this appeal, (Hallinan C.J. said at p. 114) is whether a co-owner of land held in common can be said to be in adverse possession as against the other co-owners ".

In fact the full period of prescription had run in that case, prior to September 1946, the respondent having taken possession of the land in dispute after his father's death in 1934, when he had inherited some adjoining land. But the Court in applying the proviso to section 9 (now section 10 of Cap. 224) did not find it necessary to deal with respondent's possession after 1946. It must be stressed here that the Court were dealing with *registered* land and appellant's *registered rights*.

> " The question arises in this way (the judgment reads at p. 115) : The evidence is that the respondent

was in possession for some nine years before he became a co-owner in 1943, by buying Christofides' 4/20th share ; but if it is assumed that the prescriptive period continued to run after he became a co-owner, then he would have been more than ten years in possession when the Immovable Property (Tenure, Registration and Valuation) Law came into operation on the 1st September, 1946.

.....

. . . . it is sufficient for us to say that where a person claims a prescriptive right to land, even if that land is registered in another's name, and the claimant shows that he has been in possession for the full prescriptive period before the enactment of Cap. 231 (now Cap. 224) then, in our view, *under the first proviso to section 9 of that Law* (now section 10) the proper law to be applied is the Ottoman Law". (The underlining is mine).

It is perfectly clear, in my opinion, that this case decides that even in the case of a registered owner within the provisions of section 8 (now section 9) where there is adverse possession which began before 1st September, 1946, the provisions of section 9 (now section 10) come into play and the case must be determined according to " the enactments repealed . . . . as if this Law had not been passed ". It so happened in that case, that the adverse possession had not only began prior to the new Law (as required by the proviso) but it had also run for the full period. This cannot mean that the case decides that where the adverse possession began before the 1st September, 1946, but had not run for the full period until that date, it cannot continue running against a registered owner, so as to reach completion after the 1st September 1946. Such a view would be contrary to the intention of the legislator as expressed in the " Objects and Reasons " published with the Bill of this statute, to which I have already referred ; and would be quite incompatible, in my opinion, with the wording of the first proviso to section 9 (now section 10 of Cap. 224).

The next reported case on the effect of the provisions of section 10 on claims to property based upon possession for the period of prescription, is *Christos Stokkas* v. *Christina Solomi* (1956) 21 C.L.R. p. 209 where defendant's possession from 1938 to 1952 gave her a good prescriptive title to unregistered land. I shall not discuss further this case as it refers to unregistered land. But the con-

cluding part of the judgment at p. 210, indicates the Court's view as to the running of time both before and after September, 1946, in computing the period required to give a prescriptive title to immovable property under section 9 (now section 10) :—

> " Where land is unregistered and the period of prescription has started to run before the Law, Cap. 231, (now Cap. 224) came into force, all matters relating to prescription in such a case are governed by the old Law, including the period of prescription itself ".

This again, in my opinion, cannot be read to mean that in the case of registered land, adverse possession commenced before 1st September 1946, cannot be completed after that date so as to give the person in possession a good prescriptive title against the registered owner, under the old law " as if this Law (Cap. 224) had not been passed ". The section speaks of " *any immovable property* ", making no distinction between registered and unregistered property. Dealing with prescription and *adverse possession*, the legislator must be taken to have included registered property in the expression " any immovable property ".

I am fully aware that this view runs counter to the decision of this Court in *Thomas Antoni Theodorou* v. *Christos Theori Hj Antoni* 1961 C. L. R. 203. Much to my regret, it is contrary to the judgment of my brother Mr. Justice Zekia, for whose experience in land cases I have the utmost respect, and whose judgment on this point was adopted by the other members of the Court ; and it is contrary to my own judgment in that case. But above regret and respect, there is my duty to declare and apply the law as I understand it in the light of argument and research, in each case. And recalling in mind the argument we heard in that appeal as compared to the presentation of this case, I feel grateful to learned counsel for directing me into the research which I carried out for the purposes of this judgment, under the compelling facts of this case.

In *Thomas Theodorou* v. *Christos HjAntoni* (*supra*) the disputed area was again, same as in this case, between the registered owners of two adjacent plots. The Land Registry evidence, on the basis of the survey-plan, was to the effect that the disputed portion was covered by appellant's title. The respondent relied, mainly, on his possession of that portion together with his plot between 1942 when he acquired the property and the time of the

action in 1957. The trial Court finding uninterrupted adverse possession in the respondent for this period, decided the dispute in his favour, and ordered amendment of the L.R.O. records accordingly.

On appeal, Mr. Justice Zekia in giving the leading judgment of the Court had this to say (at p. 207) :—

> " I have no doubt that section 9 of the Immovable Property (Tenure, Registration and Valuation) Law, Cap. 224, is unaffected by section 10 and acquisitive prescription over a land cannot run against a registered owner since the enactment of the said Law, on 1st September, 1946. The prescriptive period in respect of Arazi-mirié (fields as a rule) was 10 years prior to 1946, before the repeal of the Ottoman Land Code. In a number of cases the Supreme Court held that persons cultivating uninterruptedly lands of *arazi-mirié* category for 10 years prior to 1946, were entitled to obtain registration in their name of the land so cultivated even after 1946, but the 1st September, 1946, is the material date prior to which the prescriptive period had to be completed where the rights of registered owners were concerned ".

In my judgment in that case, after referring to *Chakarto* v. *Liono* (*supra*) and to *Stokkas* v. *Solomi* (*supra*) which I found distinguishable on the facts, I took the view that neither of those two cases could help the respondent. And then I went on to say :—

> " But I would go further. This is admittedly a case of registered property. And the provisions of section 9 of the present Cap. 224, regarding registered property are, in my opinion, clearly expressed in plain language. The section provides that as from 1st September, 1946, no title to immovable property can be acquired by any person by adverse possession as against the Crown or a registered owner. .....
>
> .....
>
> As far as this case is concerned, I agree with the view expressed in the judgment of my brother Zekia J. that the possession of the respondent from 1942, adverse and uninterrupted as found by the trial Court, until the filing of this action in 1957, could not give him a title to the disputed land, against the appellant, a registered owner, of the property in plot 273, as traced in the Survey plan ".

It is on this point, where we distinguish between registered and unregistered land, regarding the effect of

sections 9 and 10 of Cap. 224, on the law concerning the acquisition of prescriptive title to property, that, as at present advised, I think that both my brother Mr. Justice Zekia and I went wrong in our judgments in that case.

As I have already pointed out *Christos Stokkas* v. *Christina Solomi* (*supra*) definitely decides that as regards unregistered land, adverse possession commenced before 1st September, 1946, can continue unaffected by the provisions of Cap. 224 in sections 9 and 10 (" as if that Law had not been passed ") so as to give the person in possession from 1938 to 1952 a good prescriptive title, under the old law.

There can be no doubt, in my opinion, that if section 9 were not followed by section 10 but were to be read alone, its effect would be that no title to immovable property could ever be acquired by any person by adverse possession, as against a registered owner ; no matter what the length of such adverse possession was. But followed by section 10, as it is, and read together with that section, as it must be, in the context of the statute, section 9 must, in my opinion, be interpreted to admit that proof of undisputed and uninterrupted possession for 30 years as provided in section 10, can destroy the title of the registered owner ; and can give the person in possession a good title to the property. I believe that there can be no doubt on this point where the possession shall have commenced to run after the 1st September, 1946.

But if section 10 provides for a period of possession sufficient to destroy a registered title *notwithstanding* the provisions of section 9, surely it cannot be said that " section 9 .... is unaffected by section 10, and acquisitive prescription cannot run against a registered owner since the enactment of the said Law, on 1st September, 1946 ".

If these two sections, 9 and 10, read together admit of prescriptive or possessory title to immovable property (registered or unregistered) the period of possession required to give such a title must be sought and found in these sections. And indeed it is so found as put there by the legislator, whose intention on the point I have already discussed. The period of prescription is a full period of thirty years of " undisputed and uninterrupted adverse possession by a person, or by those under whom he claims ". And this is the new period to substitute

the various lengths of time under the abolished laws. It is the period provided in the new statute for all kinds of immovable property, registered or unregistered. The section makes no distinction on this point ; and none can, in my opinion, be introduced. But in order that the change in the law be made to take gradual and natural development ; and in order that *the rights of the persons already in possession, be preserved unaffected by the change*, as intended, the legislator inserted in the section his first proviso :

> " . . . . nothing in this section contained shall affect the period of prescription with regard to any immovable property 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 enactment repealed by this Law relating to prescription as if this Law had not been passed ".

So, for any immovable property, *registered* or *unregistered* and *notwithstanding* the provisions of section 9, all matters concerning perscription, where the adverse possession *began* before the 1st September, 1946, must be governed by the repealed legislation *as if the new statute had not been passed.*

It is, therefore, my considered opinion in the light of the argument heard in this case, and of the forcible claim arising from its facts, that even on the assumption that the respondent was rightly registered for the triangle in dispute at the time of the action, as a result of the transfer of title from his father in 1949, the appellant being in adverse possession of the property since 1938 personally, and since 1914 by her mother under whom she claims, that is to say being in adverse possession which began long before the 1st September, 1946, she is entitled to have her claim for prescriptive title on the disputed triangle, determined under the provisions of the enactments repealed by Cap. 224, *as if that law had not been passed.* And there can be no doubt that if appellant's claim be so determined, she is entitled to succeed both here and in the District Court.

If the present form of the statute is such as to be capable of destroying the legal rights of this appellant on her family-property, exercised uninterruptedly for two generations ; to destroy them contrary to the intention of the legislator

as expressed in the "Objects and Reasons" published with the Bill, the necessity perhaps now arises for the present Legislature to consider a clarification of these sections, in view of the great number of persons in Cyprus who may find themselves in the same unfortunate position of this appellant under the Immovable Property Law as at present applied by the Courts.

WILSON, P.: I agree that the appeal should be dismissed for the reasons given in the judgment of Zekia, J.

Appeal dismissed with costs.