

1966  
Oct. 7,  
Nov. 18

YIANNIS ASHIOTIS  
AND 13 OTHERS  
v.  
MICHAEL WEINER  
AND 4 OTHERS

[VASSILIADES AG. P. JOSEPHIDES, J. & LOIZOU AG. J.]

YIANNIS ASHIOTIS AND 13 OTHERS,  
*Appellants-Defendants,*

v.

MICHAEL WEINER AND 4 OTHERS,  
*Respondents-Plaintiffs.*

(Civil Appeal No. 4538).

*Practice -Appeal -Further evidence--Application for leave to produce further evidence Evidence proposed to be adduced could have been made available at the trial Court with reasonable diligence --Application, therefore, refused- Principles enunciated in Pourikos v. Fevzi (No. 2) 1962 C.L.R. 283, applicable.*

*Appeal -Further evidence on appeal--See above.*

*Evidence -Further evidence on appeal- Principles applicable--See above.*

*Further evidence on appeal--See above.*

*Cases referred to :*

*Pourikos v. Fevzi (No. 2) 1962 C.L.R. 283, followed ;*

*Braddock v. Tillotson's Newspapers Ltd. [1950] 1 K.B. 47.*

The facts are set out in the judgment of the Court.

### **Application.**

Application for leave to adduce further evidence made in the course of the hearing of an appeal against the judgment of the District Court of Nicosia (Stavrinides P.D.C. and Ioanides, D.J.) dated the 13th March, 1965 (Action No. 638/58) whereby the respondents-plaintiffs were granted an injunction restraining the appellants-defendants from interfering with and/or unlawfully trespassing in certain running water and channels.

*St. Pavlides, for the appellants*

*Chr. Mitsides with G. Constantinides for the respondents.*

The following ruling was delivered by :

VASSILIADIS, AG. P. : At this stage we have to deal with the application of the respondents, for leave to produce further evidence ; the evidence described in the application. Part of such evidence consists of Land Registry records ; another part is the testimony of the Chairman of the Village Authority of Pyroi village, and of records in his possession ; and further evidence from one of the parties who has already given evidence before the trial Court, and now wishes to give supplementary evidence and produce documents relating to the ownership of the disputed channels.

We have heard extensive argument in support of the application, at the end of which we found it unnecessary to call on the other side. It is clear at this stage that the matter is fully covered by the judgment in *Pourikos v. Ferzi* (No. 2) 1962 C.L.R. p. 283.

We can dispose of the application before us by referring to the part of the judgment of the President, Mr Justice Wilson, at page 286, where he was quoting from the judgment of Tucker L.J., in *Braddock v. Tillotson's Newspapers Ltd.*, [1950] 1 K.B. 47. It is sufficient, for the purposes of the application now before us, to repeat that :

" In the present case the plaintiff has failed to meet the first test, namely that it must be shown that the evidence could not have been obtained with reasonable diligence for use at the trial and for that reason alone this application must fail (p. 288).

It is obvious that the evidence which the respondent now proposes to adduce, is evidence which, with reasonable diligence, could have been obtained and put before the trial Court. In fact, at the end of his argument, Mr. Constantinides agreed that the evidence regarding the title of his clients is already before the Court in the form of the Land Registry exhibits, and the evidence of the Land Registry witnesses.

Adopting the same test in the present case, and for the same reasons, we are clearly of opinion that the application for leave to adduce further evidence must fail.

*Application dismissed.*

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