

Privy Council Appeal No. 65 of 1914.

Michael Tzinki and others - - - - - *Appellants*
v.
The Government of Cyprus - - - - - *Respondent*

FROM

THE SUPREME COURT OF CYPRUS.

JUDGMENT OF THE LORDS OF THE JUDICIAL COMMITTEE OF THE
PRIVY COUNCIL, DELIVERED THE 3RD MARCH, 1920.

Present at the Hearing :

VISCOUNT HALDANE.
LORD BUCKMASTER.
LORD ATKINSON.

[*Delivered by* VISCOUNT HALDANE.]

This is an appeal from a judgment of the Supreme Court of Cyprus (Sir C. R. Tyser, C.J. and Fisher, J.) dismissing an appeal from the District Court of Nicosia in an action in which the appellants were plaintiffs and the respondent was defendant, and in which judgment had been entered in the Court of First Instance for the defendant, in consequence of the two Judges in that Court having differed. The question decided was defined in an issue settled as being, " Are the plaintiffs entitled to sink and connect chains of wells (for the purpose of obtaining water and of conducting water to their village) on Arazi Mirié without having to obtain the permission of the Government to do so ? "

The answer to this question is governed by Turkish Mohammedan law as obtaining, with such modifications as have been made in its application, to the island of Cyprus by the Ottoman land laws and by Cyprus statute law. Among other forms of landownership under these laws is " Mulk " land, which comprises special kinds possessed in full ownership, and State land or Arazi Mirié, the legal ownership of which is vested in the Government, the title of the person in possession being derived from a grant made in consideration of what is called the " tapou " fee to the State and subject to the payment of a tithe. The right of possession by the tenant is in the nature of a burden on the radical title of the State, rather than of a legal estate

such as a tenant may own by English law. Although transmissible, and in this respect analogous to a leasehold, it is a usufruct granted in order that the land may be cultivated and rendered productive of tithe to the State as well as of profit to the person entitled to the possession.

Neither in the *Mejelle*, the book which contains a code of Ottoman civil law, nor in the treatise on the Ottoman land laws written by Fisher, J., nor in the statute laws of Cyprus, have their Lordships found any distinct authority decisive of the points which have been raised in the course of the arguments before them. But they think that the rights of the Mutessarifs, or tenants, of *Arazi Mirié*, which burden the radical title of the Government, are limited by the end for which they were created, the cultivation of the land and the rendering it productive. If this be so, these rights do not extend to the sinking and construction of wells or chains of wells, without special permission from the Government, for the purpose of conducting water to supply villages, as distinguished from the exclusive purpose of cultivation. It may be that if the latter purpose is the only one, the Mutessarifs may sink the wells required in order to facilitate cultivation and irrigation without such permission. Their Lordships express no opinion on the point, inasmuch as it does not arise in the case before them, and they only refer to it in order to guard against its being supposed that in affirming the judgment of the Court below they are endorsing certain somewhat general words used by the Chief Justice, who observes in passing that "his *jus utendi* does not give to the Mutessarif the right to dig wells." That point was left open in the earlier case of *Ahmed Missirli Zade v. Michael Tsinki* (9 Cyprus L.R., 68), decided in 1910, and their Lordships do not propose to express an opinion on it. The only observation they desire to make in this connection is that they think that Article 14 of the Ottoman Land Code does not, as was suggested in the argument for the appellants, apply to their case, or affect either this or the larger question of the right claimed in this action. That article provides that no one can arbitrarily make a water channel or a threshing floor on the land of another, nor do any other arbitrary act of possession on it without the sanction and knowledge of the possessor. Their Lordships are of opinion that the expression of this prohibition is not in itself enough to afford sanction for the claim to sink wells for purposes even of mere cultivation, a part from Government sanction. If the claim to do this can be sustained, as may be the case, it must rest, not on the words used in Article 14, but on the general law.

Their Lordships will humbly advise His Majesty that this appeal should be dismissed with costs.



In the Privy Council.

CHAEL TZINKI AND OTHERS

v.

THE GOVERNMENT OF CYPRUS.

DELIVERED BY VISCOUNT HAIDANE.

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