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G.S. 2. 2.

20, 1954

In the Privy Council.

31

1002

ON APPEAL FROM THE SUPREME COURT OF CYPRUS

Between :-

HUSSEIN RAJI AHMED FERID of Nicosia, as the heir of the deceased
Cadi Ahmed Muhiddin and his direct sister deceased Ayshe Vehbi,

Appellants,

—and—

1. MEHMED ATA ALI ISMET, of Nicosia,
2. PEMBE ALI ISMET, of Nicosia, as the heir of the deceased Ayshe Vehbi, of Nicosia.

Respondents.

RECORD OF PROCEEDINGS

In the Privy Council.

UNIVERSITY OF LONDON
W.C.1.

24 FEB 1955

INSTITUTE OF ADVANCED
LEGAL STUDIES

ON APPEAL FROM THE SUPREME COURT OF CYPRUS

Between :-

HUSSEIN RAJI AHMED FERID of Nicosia, as the heir of the deceased
Cadi Ahmed Muhiddin and his direct sister deceased Ayshe Vehbi,

—and—

Appellants,

1. MEHMED ATA ALI ISMET, of Nicosia,

2. PEMBE ALI ISMET, of Nicosia, as the heir of the deceased Ayshe
Vehbi, of Nicosia.

Respondents.

RECORD OF PROCEEDINGS

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In the Privy Council.

ON APPEAL FROM THE SUPREME COURT OF CYPRUS

Between :-

HUSSEIN RAJI AHMED FERID of Nicosia, as the heir of the deceased
Cadi Ahmed Muhiddin and his direct sister deceased Ayshe Vehbi,
Appellants,

—and—

1. MEHMED ATA ALI ISMET, of Nicosia,
- 10 2. PEMBE ALI ISMET, of Nicosia, as the heir of the deceased Ayshe
Vehbi, of Nicosia.

Respondents.

RECORD OF PROCEEDINGS

No. 1

CLAIM

In the Sheri Court of Nicosia — Kyrenia,
Sitting at Nicosia.

~~Sheri Appeal No. 14~~
(Action No. 14/45)

Between :-

20 MEHMED ATTA ALI ISMET, of Nicosia, as the heir of the deceased
Ayshe Vehbi, of Nicosia,

Appellants — Plaintiffs

—and—

PEMBE ALI ISMET, of Nicosia, as the heir of the deceased Ayshe
Vehbi, of Nicosia.

Respondents — Defendants

- 30 1. An order of the Court directing that the estate of the deceased
Ayshe Vehbi of Nicosia devolve exclusively upon the parties in this action
and upon Mustafa Mukhtar Ali, now living in America, who are the
children of the uncle (on mother's side) of the deceased, and upon Gulsher
Hafiz Mustafa, now of Egypt, who is the daughter of her aunt (on mother's
side).

2. That the costs of this action be paid out of the estate of the
deceased.

(Sd) Fadil N. Korkut
Advocate for Plaintiff.

Filed on 12.4.45.

*In the
Sheri
Court of
Nicosia
— Kyrenia
sitting at
Nicosia*

No. 1
Claim
12th April
1945
(Action
No. 14/45)

In the
Sheri
Court of
Nicosia
— Kyrenia
sitting at
Nicosia

No. 2

CLAIM

In the Sheri Court of Nicosia—Kyrenia,
Sitting at Nicosia.

~~Sheri Appeal No. 14~~
Action No. 41/45

Between :-

Hussein Raji Ahmed Ferid, as the heir of the deceased Cadi,
Ahmed Muhiddin and his direct sister deceased Ayshe Vehbi.

—and—

Mehmed Atta Ali Ismet, of Nicosia.

No. 2
Claim
3rd
November
1945
(Action
No. 41/45)

1. An order of the Court directing that in view of the death of Cadi
Ahmed Muhiddin and of his direct sister Ayshe Vehbi their estate devolve
exclusively upon Hussein Raji Ahmed Farid of Nicosia, who is their nearest
“asaba”, i.e. the son of their uncle’s son.

10

2. Costs of this action.

(Sd) A. Essad & Another.

Filed on the 3.11.45

No. 3
Application
for
Consolidation
of Actions
14/45 and
41/45

No. 3

Application for Consolidation
of Actions Nos. 14/45 and 41/45

13.12.1945 (Action No. 41/45)

20

For applicant (plaintiff) (1) M. Fuad, (2) A. Essad, and (3) Hakki
Suleiman, advocates.

Advocates 2 & 3 present.

For respondent (defendant): Advocate F. N. Korkut, present .

Essad Eff.: We understand that an action No. 14/45 is pending
before Your Honour’s Court. The claim in this action affects and
prejudices the interests of our client Hussein Raji Ahmed Ferid of Nicosia,
plaintiff in action No. 41/45 which is also pending before Your Honour’s
Court. I, therefore in accordance with O.14r.2 and 3 of the Rules of
Court, 1938, put in an application for the consolidation of these two actions.
A notice has been served upon my colleague Mr. F. N. Korkut. I, there-
fore, apply for an order of the Court directing the consolidation and
hearing together of action No. 41/45 and of action No. 14/45.

30

Fadil Eff.: I am of the opinion that, as actions Nos. 14/45 and
41/45 contain points of law and facts which are common in both, they
should be consolidated. But I submit that the conducting of the consolidated
actions should be left to the plaintiff in action No. 41/45. The reason for that
is that in accordance with the Laws of Evidence the onus of proof lies

on the party who asserts the affirmative issue. Phipson on Law of Evidence Edn. 5, p24. Burden of adducing evidence lies on the party who asserts affirmative issue. Best of Evidence, Edition 9, p.246, Art. 269: "General rule is that..." In this case two allegations have been put before Your Honour's Court. In action 14/45 the plaintiff puts up a claim as a "zevilerham" heir; while in action No.41/45 the plaintiff puts up a claim as an "asabe" heir. As Your Honour knows well by the general provisions of the Law of Succession ~~████~~ an "asabe" existing a "zevilerham" cannot be an heir. Therefore, the substance of issue in the consolidated action is whether the plaintiff in action No.41/45 is or not an "asabe". This being so the plaintiff in action No.14/45 is in the position of a party asserting the negative issue. Therefore, in pursuance of the Law of Evidence, and in order that the action may proceed in a way fair to both sides without embarrassing the Court, the conduct of the consolidated action should be left to the plaintiff in action No.41/45. I submit that the Rules of Court give power to the Court to take this course. O.14, r.4. This rule leaves a door open for the Court. It says that in case there are special reasons and subject to such reasons in the order of the Court, the conduct of the (consolidated) action can be assigned to a party other than the plaintiff in the first action. As to special reasons, the points I have so far submitted constitute "special reasons".

10

20

Essad Eff. :- The arguments of my learned colleague, that is, the reasons he put forth in support of his submission that he should not have the conduct of the action, cannot be raised before the issues are framed, and before both sides put up their claim and defence and before Your Honour decides upon which party the onus of proof lies.

30

O.14, r.4, makes clear who will conduct the consolidated action. I am of the opinion that the plaintiff in action No.14/45 being the party who first commenced proceedings should conduct the consolidated action.

COURT: To enable the Court to consider the arguments put forth by both parties and to arrive at a decision, hearing is adjourned to 22.12.1945 at 11 a.m.

No. 4

**Court Orders Consolidation of
Actions Nos. 14/45 and 41/45**

22.12.1945.

Parties as before.

40

The Court after considering the arguments of both parties on the relevant provisions of the Laws and Rules, directs that actions Nos. 14/45 and 41/45 be consolidated and the plaintiff in action No. 14/45 do conduct the consolidated actions.

Costs in the action.

(Sd) A. Burhaneddin

*In the
Sheri
Court of
Nicosia
- Kyrenia
sitting at
Nicosia*

**No. 3
Application
for
Consolidation
of Actions
14/45 and
41/45
(continued)**

**No. 4
Court
Orders
Consolidation
of Actions
14/45 and
41/45**

*In the
Shari
Court of
Nicosia
- Kyrenia
sitting at
Nicosia*

No. 5

Statement of Issues

22.12.1945

Parties as before.
Action No. 14/45.

No. 5
Statement
of Issues
Consolidated
Actions
14/45 and
41/45

FADIL EFF. :- My client is the son of the deceased Ali Ismet Eff., the full brother of Fatma Hanim, who was the mother of deceased Ayshe Hanim. Defendant in my action is plaintiff's full sister. The other heir in the action, Gulshen Hanim, is the daughter of deceased Pembe Hanim, a sister of Fatma Hanim who was Ayshe Hanim's mother. And Mustafa Mukhtar in this action is a full brother of both the plaintiff and the defendant in my Action. And all these deceased persons are deceased Ayshe Hanim's nearest relatives in the "zevilerham" category. As on the death of Ayshe Hanim there was no heir in the category of "ashabi-feraiz" and "asaba" her estate devolves exclusively upon the persons I mentioned.
Action No. 41/45.

10

ESSAD EFF.: (for defendant): The plaintiff in action No.41/45 is Hussein Raji Ahmed Ferid Eff. of Nicosia, who is an "asaba" heir of deceased Ahmed Muhiddin and of his full sister deceased Ayshe Hanim Vehbi Eff. He is the sole heir of the estate of the deceased Cadi Ahmed Muhiddin and of his full sister Ayshe Hanim Vehbi Eff. (who died after her brother), as he is their nearest "asaba", namely he is the son of their uncle's son on the father's side.

20

I deny that the plaintiff and the other persons mentioned in Action No. 14/45 are deceased Ayshe Hanim's heirs as "zevilerham" and I allege that the only heir is Hussein Raji Ahmed Ferid, the plaintiff in action No. 41/45. I categorically deny that the plaintiff in action No. 14/45 and other persons mentioned therein are heirs of the deceased Ayshe Hanim in the line of "zevilerham". The uncles on the father's side of Ayshe Hanim and Ahmed Muhiddin Eff. are Fahreddin Eff., Vehbi Eff. and Nouri Eff.

30

Action No. 14/45.

.. **FADIL EFF.:** I deny generally all those parts of the claim in action No. 41/45, which do not correspond with the claim in action No.14/45. In Action 41/45 I particularly deny the claim that Hussein Raji, the Plaintiff, is an heir and "asaba" of deceased Ayshe Hanim or of Ahmed Muhiddin Eff. I also deny that he is the son of both deceased's uncle's son (uncle on the father's side).

Action 41/45

.. **ESSAD EFF.:** I submit before the issues are framed that plaintiff in action No.14/45 has to prove that he is an heir of deceased Ayshe Hanim as "zevilerham" and at the same time that there are no heirs in the line of "ashabi-feraiz" or "asaba" of the deceased persons. On the other hand plaintiff in action No. 41/45 will have to prove that he is an heir of the deceased persons in the line of "asaba".

40

Action No. 14/45.

FADIL EFF.: My claim is that as a "zevilerham" I am an heir. The burden of proof on me is to prove that I am a "zevilerham" and as such an heir. Anything beyond that is denied by me and not on me to prove. The onus of proof that the plaintiff in action No.41/45 is an heir from the line of "asaba" lies on him.

*In the
Shari
Court of
Nicosia
- Kyrenia
sitting at
Nicosia*

No. 6

Decision of Issues

**No. 6
Decision
of Issues**

10 **ISSUES:-** 1) Plaintiff in Action No. 14/45 to prove that he is a "zevilerham" and heir of the deceased Ayshe Hanim Vehbi Eff.

2) Plaintiff in action No.41/45 to prove that he is the nearest heir of deceased Ahmed Muhiddin and of Ayshe Hanim Vehbi Eff. in the line of "asaba".

Hearing adjourned sine die.

(Sd) A. Burhaneddin

22.12.1945

*In the
Sheri
Court of
Nicosia
- Kyrenia
sitting at
Nicosia*

No. 7

EVIDENCE of Vahram Leonian. (Witness No. 1)

19.3.1946

(Title and appearances).

Plaintiff calls (Action No.14/45)

*Plaintiff's
Evidence*

1) **Vahram Leonian, of Nicosia, Sworn :**

*No. 7
Evidence of
Vahram
Leonian
19th March
1946
Examination*

Xnd. My name is Vahram Leonian. I am in charge of the Nicosia Water Supply. I have the custody of the documents of the respective office. At my office there is a document regarding the death of one Zehra Hji Hafiz — it is in Arabic and came from Egypt. I have a certified English translation thereof. I produce the Arabic original and its translation in English. 10

Fuad Eff: We object to its production as I don't know whether it has a bearing on the present case or not. No objection to production provided it will be discarded consequently on being found not to be relevant to this case.

*Exhibits
V.L. 1
V.L. 2*

Produced — original in Arabic marked V.L. (1). translation into English marked (V.L. (2).

Her date of death in the document is given as 19th November, 1938. It refers to the transfer of $\frac{1}{2}$ massoura of water in Nicosia, which was registered in the name of Zehra Hanim Hji Hafiz to her daughter Hadije Hanim Hussein. 20

XXnd NIL.

No. 8

EVIDENCE of Mehmet Jevded (Witness No. 2)

*No. 8
Evidence of
Mehmed
Jevded
19th March
1946
Examination*

2) **Mehmed Jevded, of Nicosia, sworn:**

Exd. My name is Mehmed Jevded. I am a clerk in the Land Registry office, Nicosia. In the records in my possession there appears a property registered in the name of Ayshe Hanim Vehbi Eff of Nicosia—it is a shop in the Qorkut Eff quarter — the registration number thereof is 284 of 8/11/1940. This property passed to Ayshe Hanim from Cadi Ahmed Muhiddin Eff by inheritance — it passed to her fully. This transfer was effected on Ayshe Vehbi's application personally. The date of application is 278/1940. The Nicosia town is marked M.T. These applications are sent in with a certificate from the Mukhtar and azas. I produce the title deed, application and the certificate. The title deeds are in the name of Muhiddin Eff. The title deeds in the name of Ayshe Hanim are mortgaged and are identical with others. 30

*Exhibits
M.J. 3
M.J. 4*

Kochan No. 284 of 1-4-1910 marked M.J. 3/19-3-46.

Kochan No. 284 of 1-4-1910 marked M.J. 4/19-3-46 40

Application dated 24-10-1940 signed by Ayshe Vehbi — Yeni Jami Street, marked M.J. 5/19-3-46.

Certificate issued by Mukhtar and Azas of St. Sophia quarter, dated 15-10-1940 — marked M.J. 6/19-3-1946.

There is a khulassa (summary) of the registration which passed to Ayshe Hanım; but it is not now with me. It is the same as this title deed. Ayshe mortgaged this title deed on 9-11-1940 after it had passed to her in security of her debt. Ayshe had first mortgaged it to Rasih and on 4-3-1942 mortgaged it to Nazife Tahir of Nicosia. These two mortgages appear in the book which I produce in Court.

10

(1) Mortgage No. G123143 of 11-11-1940 in the book marked M.J. 7 of 19-3-1946.

(2) Mortgage No. G124772/4-3-1942 in the book marked M.J.8. The second mortgage is still in force — it has not been removed.

~~XX~~ On the death of a person when we are to register someone as an heir we act upon ~~the~~ certificate issued by a muhtar and two azas. We do not act individually and so was done in this case as well; but this is not the procedure in every case. In some cases we make inquiries but in this particular case no inquiry was made. The properties set out in the title deeds are situate in Qorkut Eff Quarter, Nicosia.

20

The application shows that Ayshe was residing in Yeni Jami quarter — I ~~do not~~ know Ayshe Hanım.

The certificate produced was issued by the Mukhtar of St. Sophia. For a property situate in Iplik Pazari quarter, of a person living in Yeni Jami quarter, a certificate was issued by the Mukhtar of St. Sophia quarter and a title deed was issued before making an inquiry. I do not know if there are still properties registered or not in the name of the deceased Muhiddin, but if necessary I can make inquiries and let the Court know.

ReXtion:

30

If there has been any addition to or alteration in the property passing as inheritance to some one else then inquiries are made though the Mukhtar's certificate is received. If there has been no change to the building the office does not consider an inquiry — necessary — I know the place where Cadi Muhiddin Eff's house stands. It is in the vicinity of Yeni Jami, but I cannot say in which block it is shown as I do not have the plan with me. If the School opposite St. Sophia is included in the St. Sophia quarter naturally the house of Cadi Muhiddin Eff. must be in the St. Sophia block. As a rule certificates are issued by the Mukhtar of the quarter in which deceased lived; but if that Mukhtar does not know anything about the heirs this certificate is obtained from another quarter and the Director of L.R.O. if he wants can accept this certificate.

40

In the certificate attached to the application the Mukhtar and Azas, with reference to the deceased, say "residing in our quarter", and this has been accepted by the office; and basing myself on this acceptance I can say that Cadi Muhiddin Eff's house was situate in the St. Sophia quarter.

*In the
Sheri
Court of
Nicosia
— Kyrenia
sitting at
Nicosia*

*Plaintiffs
Evidence
(continued)*

*Exhibits
M.J. 5
M.J. 6
M.J. 7
M.J. 8*

*In the
Sheri
Court of
Nicosia
- Kyrenia
sitting at
Nicosia.*

*Plaintiff's
Evidence
(continued)*

No. 9
Evidence of
Mehmed
Ratib
19th March
1946
Examination

No. 9

EVIDENCE of Mehmet Ratib (Witness No. 3)

3) Mehmed Ratib Eff. of Nicosia sworn:

My name is Mehmed Ratib. I am a clerk in the Delegate of Evkaf's office. The Ilam (Judgment and order) books of the old Sheri Courts are now kept in the Delegate's office. I found book No. 5: there is an entry No. 417 at p. 116. It refers to the death of Ahmed Fethi Eff. from Yeni Jami quarter of Nicosia. He died at Helwan in Egypt where he had gone. Ahmed Fethi's father was the deceased Haji Hafiz Mustafa, a Kaimakam (Administrative officer).

10

Fuad Eff: We object to its production as we don't know if it has any bearing on the present case. We would not however object to production if it afterward is discarded when found not to be connected with this case.

I produce it—Book No. 5, entry 417 at p.116 marked No. R.9/19-3-46.

I found Book No. 3 of the Sheri Court of Cyprus; it has no page numbers. There is an entry No. 75. This item refers to the death of Sarrajzade Hj. Mustafa Eff's daughter Fatma and it shows that the only heir left was her son Rifat Eff. Hji Nouri. As the heir's whereabouts were unknown his father Hji Nouri Eff. was appointed as Quayyum (administrator) Date 19 Zilhigje. 1314.

20

I find entry No. 398 of the same book — it is an ilam referring to the death of Rifat son of Fatma, daughter of Sarajzade Hji Mustafa and it says that he had died 4 years before his mother. This ilam is dated 15 Rebiul Ahir, 1320.

Fuad Eff: We object to its production as we don't know if it has any bearing upon the case. We would not however object to its production if it is afterwards found to be irrelevant and is discarded.

I produce Book No. 3 entry Nos. 75 and 398 are:

Entry No. 75 marked M.R. 10/19-3-46.

Entry No. 398 marked M.R. 11/19-3-46.

30

XXtion: NIL

Exhibits
M.R. 10
M.R. 11

No. 10
Evidence of
Ibrahim
Orhan
19th March
1946

No. 10

EVIDENCE of Ibrahim Orhan (Witness No. 4)

4) Ibrahim Orhan sworn:

Xnd. My name is Ibrahim Orhan. I am the manager of the Turkish Bank Ltd. Nicosia. I knew the deceased Cadi Ahmed Muhiddin by name and not personally. On the day of his death there were deposited with our Bank 6 shares. On the death of a person we pass the shares to the names of his heirs as we do with deposits. On the basis of the Certificate produced to us from the Mukhtar and Azas the shares passed to his sister Ayshe Vehbi. I can produce this certificate if required. It was Ayshe Hanim's agent Behij who applied for this transfer of shares. The deceased Cadi Muhiddin Eff

40

was indebted to the bank and Bøhij Bey settled it on behalf of Ayshe Hanim. The shares are still in the name of Ayshe Hanim.

XXtion:

The debt of Muhiddin Eff. was settled on 6-10-1943 and on 7th November, 1943 the transfer was effected. The debt was £30.10.1 and shares were valued at about £30. The debt and shares were approximately balancing. Apart from the production of Mukhtar's certificate I did not make any inquiries as to who were the heirs and I don't know personally who the heirs of Cadi Muhiddin Eff. are.

10 **ReXXtion:**

Up to the present moment I know Ayshe Hanim to be the heir by virtue of the certificate. According to the rules of the Bank the shares of the indebted shareholders are taken and kept by the Bank as security for their debt to the Bank.

No. 11

EVIDENCE of Hafiz Mehmed Refet (Witness No. 5)

5) **Hafiz Mehmed Refet of Nicosia sworn: . .**

20 **Xtion:** My name is Hafiz Mehmed Rifet. I am from Nicosia. I was a school master and had been so for about 10 years. I am also doing an Imam. I am 82-83 years old. I knew Ahmed Muhiddin Eff. I also knew his sister Ayshe Hanim. The father of Ahmed Muhiddin Eff and Ayshe Hanim was Vehbi Eff I remember Vehbi Eff. living; he was a sheri clerk and also an Imam of the mosque. Vehbi Eff. was the brother of Ayshe Mulla who brought up my mother. Ayshe Mulla was the wife of Gezayirli Hoja, who was my and my father Tabur Imam Hafiz Hassan's teacher. Ayshe Mulla and I used to meet each other since the time I have known myself. Ayshe Mulla's house was the one she is now living in. Gezaryirli Hoja dedicated the house as vakf with the condition that on his death it would pass to Ayshe Mulla and on the latter's death to my 30 mother and then to me.

40 Ayshe' Mulla's brothers were Vehbi Eff. Haji Nouri Eff. and her sisters were Sherif Mulla and Havva Mulla. I think these were full brothers and sisters. Ayshe Mulla died without an issue. Havva Mulla had had two girl children; but these died while Havva was still in life. Hji Nouri, Ayshe Mulla, Havva Mulla and Sherif Mulla died before Cadi Muhiddin Eff. Vehbi Eff. also died before his son. Hji Nouri had altogether two children from his first wife: one of them was Hulussi who died in Cyprus; the other was Rifat who left for abroad and did not return ever since. Houloussi died before Hji Nouri. The second wife of Hji Nouri Eff. was the daughter of the Imam of Tahtal Kala from whom he had had no child. Ayshe Mulla died when living in Cadi Ahmed Muhiddin Eff's house. At the death of Ayshe Mulla and on the same date I was living in Ayshe Mulla's dedicated house i.e. in the house in which I now live. It is about 27-28 years since Ayshe Mulla died. When Ayshe Mulla lived with Cadi Muhid-

*In the
Sheri
Court of
Nicosia -
Kyrenia
sitting in
Nicosia
Plaintiff's
Evidence
(continued)*

No. 11
Evidence
of Hafiz
Mehmed
Refet
19th March,
1946.

In the
 Sheriff
 Court of
 Nicosia -
 Kyrenia
 sitting in
 Nicosia

Plaintiff's
 Evidence
 (continued)

No. 11
 Evidence
 of Hafiz
 Mehmed
 Refet
 19th March,
 1946
 (continued)

din Eff. she had her furniture locked up in one of the rooms of the house in which I lived. When Ayshe Mulla died Cadi Muhiddin Eff. removed all that furniture.

XXtion:

I don't know how long ago Vehbi Eff. died. Hji Nouri Eff. was older than Vehbi Eff. I don't know how long it is since Haji Nouri Eff's death. Vehbi lived in Yeni Jami quarter in the same house as Cadi Muhiddin Eff. and Ayshe Hanim. Vehbi Eff. and Haji Nouri Eff. were two brothers. I don't remember and don't know at all if Vehbi Eff. had a brother named Fahreddin. I frequented Oemeriye mosque. I don't remember since what age I started attending the mosque. I became acquainted with Zuriye Hanim after my marriage. I was married at 18. Zuriye Hanim used to come to my mother. I don't know if Zuriye's husband was Fahreddin. Zuriye's father was Keustahi. I don't know his name but only his nickname. Keustahi was Zuriye's father. I don't know who her husband was. I don't know if Zuriye had a husband or not. I don't know if Zuriye was married or a widow when she used to visit us; nor do I know if she had any children. I cannot know how old a lady she was when Zuriye used to visit us. I have a sister younger than I, named Nadir. My sister Nadir and my brother Ahmed also knew Ayshe Mulla.

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Vehbi's sisters Sherif, Ayshe and Havva Mulla lived in the same quarter as that of the house we now live in. I heard that my sister Nadir went abroad. My brother Ahmed is in Nicosia. I think Havva Mulla had an adopted daughter named Pembe.

ReXXtion:

When Zuriye used to come to us I lived at Yeni Jami quarter with my mother and Ayshe lived in Potamyali Street in the house in which I now live. I have just now remembered that the quarter of my house was Abdi Chavoush. I used then to frequent my grandmother Ayshe Mulla's house. I did not meet Zuriye at all at Ayshe Mulla's.

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To Court:

I don't know who Vehbi Eff's father was.

No. 12
 Evidence
 of Mustafa
 Edip
 19th March,
 1946

No. 12

EVIDENCE of Mustafa Edip (Witness No. 6)

6) Mustafa Edip of Nicosia sworn:

My name is Mustafa Edip. I am from Nicosia and now live at Lefka. I am a merchant. I know Atta Bey and his brothers. What I know is that these were two sisters and three brothers. The brothers are Ahmed Taif, Mustafa Muhtar and Mehmed Atta. Pembe and the other sister, whose name I don't remember, are dead. I went to America in 1920 and remained there until 1929. In 1929 I came back to Cyprus to get married and having married I went back to America in 1930 where I stayed until 1934 when I returned to Cyprus and ever since I am in Cyprus. Ahmed Taif and Mustafa Muhtar in 1920 when I went to America were in New York. I used to work at the same place as Ahmed Taif at the Fortham

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Hospital. Ahmed Taif afterwards used to be a cigarette-seller in a cigarette stall which his brother Mukhtar had bought for him. He then closed down and for a while was unemployed. He became ill and was removed to hospital. He was removed to a mental hospital as he suffered from mental infirmity. He stayed in a mental hospital for a considerable time. His brother Mukhtar wanted to send him to Cyprus. He was sent through the Government on board an Italian ship to Napoli and thus Ahmed Taif left America either in 1924 or 1925. In 1929 I came to Cyprus and when I was to leave Mukhtar asked me to make inquiries about Ahmed Taif and if he were in Italy to bring him to Cyprus. On my way I called at Napoli but not on my return way I went to the Mental Hospital at Napoli together with my wife Gioulsoum and some other Cypriots to see Ahmed Taif. We found the man of the hospital who opened his books and tracing Ahmed Taif's name in it said he had died 1½ years before.

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XXtion: NIL

No. 13

EVIDENCE of Mehmed Atta (Witness No. 7)

7) Mehmed Atta, of Nicosia sworn.....

My name is Mehmed Atta. I am Plaintiff in Action No.14/45. I am a trader — haberdasher since 45 years ago i.e. 1901. I am 60 years old. Ayshe Hanim, Vehbi Eff. and her brother Ahmed Muhiddin Eff. are the children of my father's sister. My father's name is Ali Ismet Eff. The name of Ayshe and Ahmed Muhiddin's mother is Fatma. My father and his brothers and sisters were three brothers and three sisters. in number, i.e. including my father they were three brothers and three sisters. They were full brothers and sisters. Their father was Mustafa Mukhtar Eff., Imam of Tahtal Kale, their mother i.e. my father's mother was Ayshe Hanim. I don't remember my grandmother Ayshe Hanim. It is about 30 years since my grandmother Ayshe died.

My father's sisters are Pembe, Hatije and Fatma and his brothers are Attaoullah Eff. Yussuf Zia and Ali Ismet. I don't remember Attaoullah Eff. when he lived. I was named Atta as I was born after his death. Attaoullah died before marrying. He did not leave any children. Yussuf is not living and it is about 17-18 years since (his death). Yussuf had a son named Lutfi, who died before him.

My father's sister Hadije is not in life and it is about 22-24 years since (her death), she had no children. Hatije's husband was Hji Nouri Eff., the brother of Ayshe Hanim's father Vehbi Eff.

Pembe Hanim is not in life, I do not remember her. Pembe had married twice; by her first husband she had a girl. I don't remember when Nazife was married. Nazife's daughter was the midwife Feyziye who also is dead. By her second husband she had three children: Ahmed Fetthi, Zehra and Gioulshen; and this Gioulshen is the one whose name is given in the writ of summons. Zehra and Ahmed Fetthi are dead. They died in Egypt, and this Zehra is the one mentioned in the document produced today by witness Leonian; and Ahmed Fetthi mentioned in the book produced by witness Mehmed Ratip is the one to whom I have referred We were five brothers and sisters; two sisters and

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*In the
Sheri
Court of
Nicosia -
Kyrenia
sitting in
Nicosia*
—
*Plaintiff's
Evidence
(continued)*

No. 13
Evidence
of Mehmed
Atta
19th March,
1946.

*In the
Sheri
Court of
Nicosia -
Kyrenia
sitting in
Nicosia*
—
*Plaintiff's
Evidence
(continued)*

No. 13
Evidence
of Mehmed
Atta
(continued)

three brothers: Munibe, Pembe and Ahmed Taif, Mustafa Mukhtar and I, Mehmet Atta. Munibe died about 22-24 years ago without an issue. Mustafa Mukhtar is in New York. Ahmed Taif died at Napoli. Ahmed Taif I mentioned is the one referred to in Edip's evidence. All of us are full brothers and sisters. My mother's name is Emine Haji Ali. Ayshe Hanim Vehbi is the daughter of my aunt (brother's sister) Fatma. My aunt had two children Ayshe Hanim and Ahmed Muhiddin Eff. Ayshe and Ahmed Muhiddin's father Vehbi Eff. and their mother Fatma Hanim died before them. My father Ali Ismet and my aunt Fatma died in about 1918 in the same week. Ayshe Hanim and Ahmed Muhiddin did not marry in their life and they had no issue. The father of Ayshe Hanim and Ahmed Muhiddin Eff. was Vehbi; and Vehbi's brother was Haji Nouri Eff. who had married my aunt Hadije. Haji Nouri is not living, he died about 42-43 years ago. Hji Nouri used to tell me that he had two children from his first wife one of whom had gone abroad and the other had died. The name of Haji Nouri's first wife was Fatma.

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Vehbi also had three daughters: Havva Mulla, Ayshe Mulla and Sherif Mulla. I don't remember Sherif Mulla. I do remember Havva Mulla and Ayshe Mulla; they are not in life; they died long before Cadi Muhiddin Eff. Sheriff, Havva and Ayshe Mulla did not leave any issue after them. Ayshe and Sheriff were issueless. Havva however had a child who died before her.

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Vehbi had no brothers and sisters other than those I have mentioned. Ayshe Hanim Vehbi Eff's heirs were Pembe Hanim, Mustafa Mukhtar, Gioulshen Hanim and Mehmed Atta. The deceased had no heirs other than us.

Court adjourned to 3 p.m.

19-3-46.

(sd) A. BURHANEDDIN.
Sheri Judge.

Appearances as before:

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XXtion: I used to frequent Ahmed Muhiddin's and Ayshe's house when they lived. My aunt Fatma had two children called Muhiddin and Ayshe and no other. I am certain about it. She had no other child called Atta, a namesake of mine. I don't remember the name of my father's father, who was an Imam of Tahtal Kala. It did not happen to me to go to Omeriye quarter for affairs and to hear there to have been living a lady named Zuriye. I know a mad woman named Mounteha and her son Remzi. When Muhiddin was in life I did not hear if he and Mounteha had any relationship between them. Mounteha had a brother in the Railway Department and was called Ahmed Ferid; I knew him. I had no relationships with them. I don't know if he was Mounteha's brother. I don't remember if I knew Ahmed Raji before this action, i.e. the one who is plaintiff in Action No. 41/45. I have come to know him for the first time when he came to Cyprus for this case. He was a child I don't remember. I did not hear Mounteha and her son go to Fetwa Emini on the death of Cadi Muhiddin Eff. and claim to be his heirs — I hear it now. I did not hear as a rumour, after Cadi Muhiddin's death, that he had dedicated his property to be Vakf. I saw a document by which

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Muhiddin Eff. advised Ayshe Hanim to dedicate as Vakf all his property after the latter's death. I saw it two or three days after Ayshe's death. I don't remember, where I saw it and who showed it to me. After Cadi Muhiddin's death I asked his sister Ayshe Hanim's hand in marriage. I suited through my sister Pembe and not through any other person. I know Ayshe's maidservant Nazife. I did not open the matter to Nazife. I did not hear if there had been a conversation between my sister and Nazife about it. Ayshe may have told her. Ayshe said that she was old and would not marry. Besides these, I did not make any approaches to Ayshe for this matter through the Imam of Laleli quarter. I know the advocate's clerk Gioumroukji Ahmed Hamdi. I did not ask the mediation of Ahmed Hamdi and of the Imam of Laleli in this matter. My object in asking this old woman's hand who would be my heir was because she was left alone and I sympathized with her. I know a certain Hussein Mehmed of Kiomourju; I heard from him that he was a servant of my grandfather Mustafa Mukhtar, the Imam of Tahtakalla. I did not hear it from anybody else before we met. I received an information in Nicosia in connection with some one who had been in the service of my grandfather and proceeded to Kiomourju with Mehmed Hayreddin to see him. This old man was somewhat a dotard. His words to me were inconsistent with one another. This man gave me an information about a certain Fahreddin Eff. This man, as well, did not say Vehbi and Haji Nouri had a third brother. He said that he had a faint memory of Vehbi Eff., and as regards Hji Nouri Eff. his memory failed him altogether. He did not say that they had a third brother called Fahreddin Eff., who had died in Istanbul and left his wife Zuriye and his children. We did not subpoena this man as we thought it was not necessary. I learned Hussein Raji's claim to inheritance when I received the Writ of Summons. Months before Hussein Raji's arrival in Cyprus and later to Ayshe's death I did not make inquiries from anybody about Raji's life or death. I know Dentist Saffet, the son of Sheikh Mawlawi. I did not make inquiries from Saffet mentioning Raji's name. On the death of Ayshe Hanim the Sheri Court took charge of her estate. As my brother Mustafa Mukhtar was in America and my niece Gioulshen in Egypt I came to the Sheri Court and informed them accordingly. Before the sale of the estate the Court did not tell me that they were in receipt of a document to the effect that Hussein Raji was an heir. The Sheri Clerk did not give me any information in this regard. I sometimes was present at the sale of the estate for 2-3 days. Ali Raji's name was not mentioned at the sale of the estate and I did not know he was likely to be an heir — nor did I hear his name before Hussein Raji's arrival. I know auctioneer Abdullah Dervish by name — I may recognize him if I see him. I know auctioneer Yussuf and auctioneer Assim; I don't know auctioneer Assaf. One day when I was at the sale and before going in to where the sale took place I told the Mukhtar that as the door (of the house) was left open the children had destroyed the flowers. I don't remember if there was anybody else there. There, a man unknown to me did not tell me that a certain Remzi was shouting out and saying that Ayshe Hanim had an heir named

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Sheri
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*Plaintiff's
Evidence
(continued)*

No. 13
Evidence
of Mehmed
Atta
(continued)

*In the
Sheri
Court of
Nicosia -
Kyrenia
sitting in
Nicosia*
—
*Plaintiff's
Evidence
(continued)*

No. 13
Evidence
of Mehmed
Atta
(continued)

Raji and I did not in reply say. "Yes, there was an heir named Raji but he is now dead; and at present I am the heir." No such words passed there. I don't remember my son and Assaf bidding up for some articles at the auction. On that day I did not hear Fethi say to Assaf "Why do you bid up, these articles belong to us", and that thereupon Assaf said, "You are not the heirs; Remzi says the heir is Ferid's son Raji who is abroad"; And I did not then retort saying, "Yes, my son, but he is dead". I don't remember anything like this happening; and there Assim did not say to me "No, he is not dead; he was a policeman in Beirut and now is a Police officer in Istanbul." My son on his return from the Police station informed me that he had been there to report the fact that some jewellery had been lifted from Ayshe Hanim's house. My son did not tell me to whom he had reported the case. I know one Sgt. Ali Raji; his wife is related to my son on his wife's side. My son did not tell me that he had reported it to Ali Raji. He told me that he had reported the matter to an Armenian Sgt. Kasbar. My son did not tell me what was the reply of the Police to him. My son did not tell me that the Police had told him that he should make his complaint through the Sheri Court Two or three days after this complaint I did not come across Ali Aaji near my shop. No conversation took place between me and Ali Raji in connection with this inheritance. Ali Raji did not congratulate me on the big inheritance I would have; and he did not say further: "Remzi last night in our quarter alleged that the heir was abroad and that this heir was one named Raji". He did not tell me that Ali Edip had said that Salim would try hard for him i.e. Ali Edip and that Salih and Edip would share the inheritance between them and I did not then reply to Ali Raji. "Don't pay attention to such things, these are the idle talk of the street, the heir in this case is Raji, a Police Officer in Turkey". And I did not then explain to him my relationship and that of Ali Raji with him; because we are not related Sgt Ali Raji didn't say "lest that Raji is ME."

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I remember Hji Nouri Eff's shop. Our shops were opposite each other. It never happened for Hji Nouri and Dedezade Assim to occupy shops next to each other. Dedezade was a trader and had a shop and adjoining it there was not the shop of Haji Nouri Eff. I don't remember, I did not see at all Ferid Eff., who was in the Railway Department, go to Hji Nouri's shop. I don't remember this Ferid having a brother. I don't know who Ferid's father was.

ReXXtion: I knew Haji Nouri's shop before I opened one myself I knew Hji Nouri's shop at the market since my seventh year of age. During all this period Haji Nouri's shop was where draper Dervish has one in the Amour street under the arch. The shop I had opened was opposite Haji Nouri's shop. Dedezade's shop was in the other — in the Ermou Street where his son now has a shop. Cadi Muhiddin Eff., had caused that shop to be sold. When I asked Ayshe Hanim's hand in marriage I was divorced from my wife

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Fuad Eff.

through Court: Gioulshen Hanim has no son; she did not marry.

Mustafa who had come to Cyprus was the son of Gioulshen's sister. Mustafa came to Cyprus after Ayshe's death and he had in his possession a power-of-attorney from Gioulshen. I don't know if Gioulshen is included in the parties of my action as Plaintiff. Mustafa came to Cyprus after I had instituted this action and in my action Gioulshen's name is mentioned.

10 **To Court:** I don't know the name of the father of Imam Mustafa Mukhtar, the father of my father. Neither do I know nor do I have any information who he was. My information about Muhiddin's father Vehbi is based on hearsay from my family. I heard that Vehbi Eff.'s father was Osman. I have no information who Osman Eff.'s father was.

*Sheri
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Court of
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Kyrenia
sitting in
Nicosia

Plaintiff's
Evidence
(continued)*

No. 14

EVIDENCE of Hadije Hussein Refet (Witness No. 8)

8) **Hadije Hussein Refet**, of Nicosia sworn :

My name is Hadije Hussein Refet. I am originally from Nicosia but (now) a resident in Egypt. I am sojourning in Cyprus. I am a widow. My husband was Mehmed Dervish an Acting Judge in the Egyptian Courts I first went to Egypt in 1897 when I was 17 years old. I know Atta Bey a party in this action. I also knew the deceased Ayshe Hanim and Muhiddin Eff. I also know Atta and his brother — they are my grand uncle Ali's children — Ahmed Muhiddin and Ayshe are children of my granhaunt. Besides my uncle Ali and aunt Fatma these had a sister named Hatije and a brother Yussuf and my grandmother Pembe. My mother's name was Zehra; she died in 1938. My uncle Ahmed Fetthi died in 1919 — Gioulshen Hanim is my aunt. I have no other aunt. I had also a maternal aunt named Nasife. I don't remember her. My aunt Hadije had no issue. My aunt Fatma had no children other than the deceased Ayshe and Muhiddin. Yussuf Eff., had a son who died before his father. Yussuf also is dead; he died before Ahmed Muhiddin. Muhiddin Eff's mother died before him. The children of Ali Eff. are Atta, Ahmed, Mustafa Mukhtar, Pembe and Mounibe and from these Mehmed Atta, Moustafa Mukhtar and Pembe are living.

30 The father of Ayshe Hanim and Muhiddin is Vehbi. I don't remember him; but I was a child (at the time). Vehbi had Haji Nouri as brother and Sherrif, Havva and Ayshe Mulla as sisters — they had no other brother and sisters.

40 Haji Nouri was married with my aunt Hadije, sister of my aunt Fatma; he had no issue from her. Haji Nouri had Houloussi, who is dead, and another child whom I don't know — he is not in Cyprus. It is about 40 years since Hji Nouri died — Sherif, Havva and Ayshe Mullas are not living — they died before Muhiddin. These three sisters had no issue.

XXtion: I don't know any of Hji Nouri's children. I knew Houloussi and that he was dead. I don't know if he had any other children. I did not hear. Before I left for Egypt I did not know a certain Zuriye in Omeriye quarter nor did I know who her husband was. I had not heard before of Hussein Raji, who is claiming to be heir in this action.

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Evidence
of Hadije
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*Plaintiff's
Evidence
(continued)*

It is about 50 years ago that I had left Cyprus. I don't know and did not hear if Vehbi had a brother and that he had died before I was born. Gioulshen is my aunt — she died three months ago. I am here on a visit and by chance. I do not know a woman named Mounteha. I do not know one Ferid Eff. in Cyprus.

ReXXtion. My information about Vehbi's brothers and sisters was obtained from my aunts, i.e. from the wives of Vehbi, and Haji Nouri. Had there been any other brother and sister I should be informed. I am not an heir of Gioulshen — I do not know if I am her asaba or not. Formerly she had a nephew who had died in Cyprus.

To Court: I do not know who was the father of Vehbi, the father of Ayshe and Muhiddin.

Adjourned to 20.3.1946 at 10 a.m.

19.3.1946

(Sd) A. BURHANEDDIN

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No. 15
Evidence
of Zehra
Nevber
Hassan
20th March,
1946.

No. 15

EVIDENCE of Zehra Nevber Hassan, (Witness No. 9)

9) Zehra Nevber Hassan, of Nicosia, sworn :

My name is Zehra Nevber; I come from Nicosia. I am a school mistress — I run a private school now. Formerly I was being employed by the Education office — I had 18 years service. I was at Lefka as directress. As I was going to marry I resigned and withdrew from service. I know Atta Bey and his brothers and sisters well. I know well Ayshe Hanim, Vehbi Eff. and her brother Muhiddin Eff. My mother was brought up by Atta's mother on whose death my mother moved to Ahmed Muhiddin's house — Ahmed Muhiddin's mother Fatma was Atta's aunt (sister of father). My mother remained there for many years — until 1918 when I finished the school. And Haji Nouri Eff. had brought up my elder sister. Hji Nouri was Ayshe and Muhiddin's uncle (father's brother). I think Muhiddin died in 1937. I was then a directress at the Lefka school. Ahmed Muhiddin had been ill for a long time and we always used to visit him. One day before Muhiddin's death and when he was ill, we went there and a conversation took place. This conversation took place in his room at his house. I went with my mother. He said to us: "What a lucky coincidence; I might have died without seeing you". My mother replied: "We wish you recovery and not death. May God restore your health" — He said "You wish my recovery while my relatives look forward to my death". My mother asked "Who are these"; and he said: "Well our Atta — he wants to inherit my estate. Like strangers inquires about my health casually, leaving the impression that he is more interested in my death than in my health; and he visits me like a stranger. I am very much annoyed by this attitude of Atta; and I have drawn up a deed of dedication so that he inherits not a penny." There was nobody there except me and my mother when this conversation took place. Nazife was downstairs busy with her work; only Muhiddin's sister Ayshe was present. Upon these words Muhiddin addressed Ayshe: "I have prepared a deed of dedication (vakf) so that not a penny is left to Atta after my death. You sign this — it is my will"; and to Ayshe,

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he said: "You also dedicate what you will inherit so that nothing is left to Atta". My mother died in 1940.

XXtion: This conversation took place 5—6 months before Muhiddin's death. The whole desire of Muhiddin was to dedicate these properties as vakf. Muhiddin Eff. did not show us the deed of dedication; he said to his sister "I have made a dedication and you also make one." He was angry with Atta, whom he exposed. From these words I did not make out if he loved Att or not. Before that day I knew Atta was Muhiddin's relation. Until 1918 I used to see Atta come to Muhiddin's house. I know
 10 Nazife Tahir — she stayed with Muhiddin — after my mother — she stayed there until her death. Ayshe was present at this conversation. Assuming Muhiddin was dead, Ayshe being in life Atta would not have received anything. Muhiddin spoke of Atta in the way he did, because he was cross with him. Inasmuch as Ayshe was in life his words "Atta wants to inherit my estate" was probably due to a secret understanding between them; and (as a matter of fact) I know a small piece of this secret: Atta wanted to marry Ayshe and Muhiddin advised Ayshe not to marry Atta; and this advice was made on that day
 20 in our presence. Atta wanted to marry Ayshe when Muhiddin was alive and that is why Muhiddin made his advice. I don't know if afterwards Ayshe put this advice into effect. Muhiddin thous constituted us a witness to the dedication he made, but I did not come to inform the Evkaf office.

I am certain that Nezife went to Muhiddin in 1918 and stayed there until his death. Wher Muhiddin died Nazife Tahir was in that house and stayed there until Ayshe's death. Cadi Muhiddin for some time had been to Istanbul for an operation — it was in about 1930-1933 and this was his second visit to Istanbul; before that he had been there in 1925-1926 — it was a time when I had recently become a schoolmistress.

ReXXtion: The dates I give of Muhiddin's visits to Istanbul are
 30 not definite but approximate. I only know for certain that he went to Istanbul twice. I don't know with whom he had gone the first time; the second time he went with Ayshe and his adopted son Arif — except these three no one else went with them. Muhiddin did not produce the deed of vakf and did not have us a witness to it; he simply spoke to us and we listened; he did not show us the deed of vakf. I know all the properties that belonged to Ahmed Muhiddin; only the house they lived in was an inheritance from their father. If Ayshe Hanim has no asaba heirs then Atta becomes Ayshe's heir as a matter of course.

No. 16

40 **EVIDENCE of Mehmet Shefik Zia (Witness No. 10)**

10) **Mehmed Shefik Zia of Nicosia, sworn :**

My name is Mehmed Shefik Zia. I am originally from Nicosia and for thirty years I had been in America. I am an engineer and an agent for the Mediterranean zone of the American Brace Shoe Railway Industry and Heavy Supplies Co. I am on commission in Cyprus as Cyprus is included in my sphere. I visit this place. I know Atta Bey and his brothers

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 Court of
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 —
 Plaintiff's
 Evidence
 (continued)*

No. 15
 Evidence
 of Zehra
 Nevber
 Hassan
 20th March,
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No. 16
 Evidence
 of Mehmed
 Shefik
 Zia
 20th March,
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*Plaintiff's
Evidence
(continued)*

No. 16
Evidence
of Mehmed
Shefik
Zia
20th March,
1946.
(continued)

and sisters. I knew deceased Ayshe and her brother Ahmed Muhiddin Ayshe and Muhiddin are the children of Fatma Hanim, a sister of Pembe Hanim, who was grandmother of my mother Feyziye. My mother's mother was Nezife, the mother of the last mentioned was Pembe, a daughter of the Imam of Tahtalkala — Atta is my third cousin — Atta is the son of Ali Eff. who was my granduncle (mother's side), and Ali's sister. Pembe was the mother of my mother's mother. I had some other relations with Ahmed Muhiddin besides this relationship. My parents died when I was a child and Muhiddin as a relation of mine had been appointed my guardian. I stayed at Muhiddin's for a short period together with my sister — it was in 1903. Mehmed Dervish, who was brother of Beligh Pasha, was my aunt's (mother's side) husband. We had gone to Egypt and stayed there for about two years. From Egypt I came to Cyprus as Muhiddin had urged me; and he himself brought me back and I stayed with him. I came back in 1905 and stayed there until the end of September, 1914. In September, 1914, I went to Famagusta as an Assistant Director of the school and stayed there for four school years. In 1916 I departed from Cyprus for good. During this period I used to meet Ahmed Muhiddin — it was only Ayshe Hanim that I was not seeing as she was grown up and covered herself from me. When I came to Nicosia I used to stay with Hatije Hanim, the sister of Ayshe's mother. I used to eat and sleep at Hadije's. During the time I lived there and until the time I left Cyprus, Fatma (Ayshe's mother) lived in the same house in which Ayshe Mulla, another relation of Ahmed Muhiddin, was also living. Ayshe Mulla was the sister of Ahmed Muhiddin's father, and she had stayed there for three years and died there. She spent the last three years of her life at Muhiddin's home. I stayed there as a man. I was in a position to come home and see them; and I used to attend every kind of domestic affair. I used to go to the market and receive guests. Muhiddin was at home on Bairam and holidays. Muhiddin looked after his relations considerably. He used to send by me food every evening to his aunts (father's sisters) and before the month of Ramazan set in he used to supply them with sugar, rice, butter and boulgouri. These he supplied to his relatives and the poor and I used to make the distribution. Atta's father Ali Eff. was the son of Mukhtar, the Imam of Tahtakhala and of Ayshe Kadin. I don't remember Imam Mukhtar in life; I remember his wife Ayshe Kadin. This Ayshe Kadin was dead when I left for America. They had six children; of them one is Attaullah whom I don't remember but of whom I used to hear from my grandmother. (The others are) Yousouf, Zia known as Sallanbash, my uncle (mother's brother) Ali my grand grandmother Pembe Hussein, my aunts (mother's sisters) Hatije Hanim and Fatma Hanim. These were full brothers and sisters. I learned from my family that Attaullah had died before getting married Yussuf Zia is dead. I left him living but he died whilst I was in America. I don't know whether he died before or after Muhiddin. Yussuf Zia did not leave any issue; his son Loutfi died before his father when I was in Cyprus.

Ali Eff. had five children, Mounibe, Atta, Mustafa Mukhtar, Pembe and

Ahmed Taif. I think these died when I was in Cyprus and before Muhiddin. Ahmed Taif died at the Mental Hospital of Napoli in 1928. In 1926 before he was dead, I saw him at the mental hospital; he was suffering from grave mental disease. I say this basing myself on a letter sent me personally from the mental hospital. I don't remember Pembe namely the daughter of Tahtalkale Imam. Pembe had the following children: her daughter Nazife, my aunt Zehra, my uncle Fetthi and Gioulshen. I understand that these children were by two husbands. I don't remember my grandmother Nezife — she had died young, Zehra Hanim, Fetthi Eff. and Gioulshen Hanim were in Egypt since about 45 years ago and perhaps more. I don't remember them leaving Cyprus. Zehra and Fetthi are dead. Gioulshen also died recently — she died in Egypt in December, 1945. Imam's daughter Hadije had no issue. Fatma had two children one Ahmed Muhiddin and the other Ayshe — these did not marry at all. Hadije Hanim's husband Haji Nouri Eff. was the uncle of Ayshe and Ahmed Muhiddin. Ayshe Hanim's and Ahmed Muhiddin's father were five brothers and sisters: the eldest was Sherif Mulla, whom I do not remember; the others are: Haji Nouri Eff, Ayshe Mulla, Vehbi Eff. and Havva Mulla. I don't remember Vehbi. I remember Haji Nouri, Havva and Ayshe. Haji Nouri is not living now — he died in about 1903, 40 years ago. I was very small but I remember very well. Ayshe Mulla died in 1912 before I left Cyprus. I left Havva in life but I know she died later. The aunts to whom I said I used to take food were Havva and Ayshe Mulla. Before Ayshe Mulla was settled in Muhiddin's house I used to take her food every evening. I don't know if Havva died before or after Muhiddin. Ayshe Mulla did not leave any issue i.e. She had no children; nor did Sheriff Mulla — I used to hear from her and from my aunts that Havva had two children who had died in small age. According to family rumour Haji Nouri had two sons and had died before he did. My information about the five brothers and sisters of Vehbi, including him as well, was obtained on account of my relationship with them and on account of my life in Muhiddin's house and from my aunt Hadije and from my aunt Fatma who was Vehbi's wife and also from Ayshe Mulla and Havva Mulla. Ayshe who died at Ahmed Muhiddin's house, had a house of her own and therein she had her personal effects and books which belonged to her husband Gezayirli Hoja. We had removed Ayshe's effects to Muhiddin's house before her death — some of the effects were removed to the house after her death and were partly sold by Muhiddin.

XXtion:

40 I shall attain 50 years of age after two months. After my departure I had two visits to Cyprus — this is my third visit. Before this in February, 1928 for the first time I had called at Famagusta but did not stay in Cyprus. On the 2nd time I came to Cyprus in October, 1945 and I stayed for a week at the boarding house called "Europe". It is two days since I arrived here, and I am staying at the George Hotel. I am related through Vehbi's and Hji Nouri's wives and through Muhiddin and his sisters. My relationship with Muhiddin is on my mother's and Atta's

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Court of
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sitting in
Nicosia*
—
*Plaintiff's
Evidence
(continued)*

No. 16
Evidence
of Mehmed
Shefik
Zia
20th March,
1946.
(continued)

*In the
Sheri
Court of
Nicosia —
Kyrenia
sitting in
Nicosia*
—
*Plaintiff's
Evidence
(continued)*

mother's side. I don't remember Vehbi. I heard that Vehbi's father was one Osman Eff. Ayshe Mulla used to say so. I don't remember Hadije Abdurrezak being brought up by Vehbi — it is not precluded — I don't know if it was 1903 i.e. before my time. In this space of time nothing of that sort happened nor do I remember a lady by that name. There was a maddish woman called Mounteha; but she did not come to see Muhiddin. I don't remember Vehbi's eldest son Fahreddin who was dead long before I was born. Had he had a son I should know; because Ayshe Mulla used to tell me ^{about} I base my information on what Fatma, Havva, Ayshe and Muhiddin told me. Ayshe Mulla died in 1912. I left Havva in life and I don't know if she is now dead. I had also left Hadije in life. I have a pedigree note of mine but I cannot produce it now in Court. I have not got anything official. I keep a note book for my private and professional items. Before leaving Cyprus for America I did not know a relation of mine named Ferid — I have a brother in Istanbul — his name is Hassan Behjet Keseli — he is a clerk in the Land Products office.

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ReXXtion: NIL

To Court: I don't know who the father of Osman, the father of Vehbi was. I don't know who the father of Imam Mustafa Mukhtar father of Atta's father Ali Ismet was. Vehbi's father Osman had no brother or brothers and sisters. If there are any I don't know.

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No. 17

EVIDENCE of Mehmet Hayeddin (Witness No. 11)

11) . . Mehmed Hayreddin of Nicosia sworn:

My name is Mehmed Hayreddin. I am a draper — I am 58-59 years old. I am living in Nicosia for the last 52-53 years. When I was brought to Nicosia I was taken to Yussuf Zia 52-53 years ago who brought me up — Yussuf Zia was the son of the Tahtalkala Imam and uncle (paternal) of Atta Bey. I stayed in the service of Yussuf Zia until his death. I know the family of Yussuf Zia well. Yussuf Zia's mother was Ayshe Kadin I remember her she is dead since 33-34 years ago — I don't remember Yussuf's father but I know his name — it is Hafiz Mustafa Mukhtar. Yussuf Zia's brother was Ali whom I remember. He had also another brother named Attaoullah whom I don't remember and who had died before marrying. I don't know who Imam Mustafa Mukhtar's father was. I know Mustafa Mukhtar's brothers. One was Osman Enveri who died without issue. His other brother was in Istanbul — I don't know his name; I know his son only who had come here — he had come in 1922 and his name was Yussuf Zia. He stayed with us and with Ahmed Muhiddin. My master Sallanbash Yussuf's brother was Attaoullah and Ali Ismet, Ali Ismet referred to in this case, was Atta's father. Ali Ismet died in 1918. The sister of Ali Ismet and Sallanbash Yussuf was Pembe whom I don't remember in life. The other sisters are Hadije and Matma. Fatma is Ahmed Muhiddin's mother;

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she died in 1918. Hadije died at our house in 1927-1928. My adopted father Yussuf Sallanbash died in 1931; he had children and his son Mustafa had died before him. Mounhibe, a sister of Atta, died about 22-23 years ago. Ahmed Muhiddin Eff. died 8-9 years ago. The husband of Hadije, the sister of my adopted father was Haji Nouri Eff. Haji Nouri was married to Fatma's sister Hadije — Haji Nouri was the brother of Ahmed Muhiddin's father — Hji Nouri was a draper and dealer in books — it is 42-43 years since he died and his shop was a small place opposite the Toujjar Bashi market. A certain Dervish is now occupying that shop.

10 Hji Nouri continued to occupy that shop until his death. On his death Ahmed Muhiddin had his estate sold by auction I saw it — I was then a draper again and lived with my master.

XXtion:

Ahmed Muhiddin Eff. was a Sheri clerk before becoming a Sheri Judge. He was acting as Cadi and I don't know when he was appointed. I used to occupy Sallanbash Yussuf Eff's. shop. Haji Nori had a shop but as he had no one to assist him, I sometimes used to take his daily provision to his house. I don't know one Ferid. I don't know Ferid in the Railway Department who was a relation of Haji Nouri and Vehbi. I

20 and Atta Bey had gone to Kiomurju for an excursion. We saw there an old man named Hussein and had a talk with him. In the course of his conversation he did not refer to Ferid Eff. Atta Bey asked him "do you know me" Hussein recognised me at sight as he used to come to my shop and have a chat with me. I asked "Do you know Atta Bey" — He replied "No". Atta said: "I am the nephew (brother's son) of Yussuf Eff." Hussein said: "Oh, is it you". I said to Hussein "Atta Bey's father was Ali Eff. and Ali Eff. had brothers — do you know them?". Hussein replied "How do I know ?" I did not ask anything else. This was all our conversation as far as this matter was concerned. He talked

30 nonsense so I walked away. Then after going 5-10 paces I came back again and then we got up and had a walk, Advocate Fadil Bey and Atta were with me and getting into the car we came back to Nicosia.

ReXXtion: NIL.**Court:** Adjourned to 21.3.46, 10 a.m. for want of time.

(sd) A. Burhaneddin.
Sheri Judge.

No. 18**EVIDENCE FOR THE DEFENCE.****EVIDENCE of Mehmet Assim Dedezade (Defence Witness No. 1)**

40 Defence calls (Action No. 41/45).

D. 1. Mehmed Assim Dedezade of Nicosia, sworn:

My name is Mehmed Dedezade. I am a farmer and had been a merchant before. My shop was in the Bazirganlar street. I had no partner in my shop. My brother Reshad and my uncle Hji Ibrahim and I used to work together. My shop's neighbours were: on one side Hji

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*Plaintiff's
Evidence
(continued)*

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Defence Calls.
Evidence
of Mehmed
Assim
Dedezade
21st March,
1946.

*In the
Sheri
Court of
Nicosia -
Kyrenia
sitting in
Nicosia*

*Defendant's
Evidence
(continued)*

No. 18.
Evidence
of Mehmed
Assim
Dedeade
21st March,
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Nouri Eff. and on the other Ali Eff. who was Atta's father. I kept this shop six years this was about 40 years ago and over. Lately, I know there was one Ferid Eff. in the Railway Department. I don't know his father. I don't remember (his father's) name).

Ferid used to come to Haji Nouri's shop. Hji Nouri used to call me and say: "Here is our pest coming to ask for pocket money." He (Ferid) was then a Village Roads Foreman at Dilliria. Hji Nouri used to tell that Ferid was his brother's son (nephew). Raji's father was calling Haji Nouri "uncle". Hji Nouri used to give money to Ferid who used to call on him every 5-10 days. Ferid had a son named Raji. It is over 30 years since I have known Raji. Raji's father and I used to have drinking parties at Baklavaji Rifat's shop. The boy (Raji) used to come and say to Ferid: "My mother is waiting for you at home". Paklavaji Rifat is Kiamil Agha's son. I have daughters and I had gone to Istanbul to bring dowry for them. I had met Raji before at Beirut; there he covered my eyes from behind and said "Guess who I am", and I recognised him; it was in 1912-1913. To Istanbul I went in 1926 - 1928. I had made 2-3 trips to Istanbul. In Istanbul I passed from Galata — Ahmed Muhiddin was smoking a hubble-bubble there and called me and I entered the club there. He stood me a treat of tea and we had cakes as well. Raji who was sitting near Muhiddin got up and shook hands with me. Ahmed Muhiddin said to me: "Do you recognise this gentleman?"; and I said "I recognised him, he is your uncle's son". And Muhiddin said to me: "This gentleman is our heir". Muhiddin Eff. was there in Istanbul for an operation as he was sick. When I saw Raji near Muhiddin he was wearing his official dress of Police Officer.

XXtion: Now I am doing farming, I have been doing so for 40 years now. I also deal in draperies and cereals and do any kind of business. My main occupation is my shop but I also do farming by supervision. The income I receive from farming is a pocket money. It is since 1934 that I stopped trading leaving the shop to my children. The shop I ran together with my uncle was different to the one I had. I opened a shop of mine after working six years with my uncle. The shop I opened was next to the shop of Atta's father. I had opened the separate shop about 30 years ago and then made it over to my children. It is 40—45 years since I separated myself from my uncle's shop. I had opened the shop soon after the separation. I had been trading 30—35 years before making over my shop. I don't know of dates and arithmetic. I remember the dates I had been to Istanbul because of the date of marriages of my daughters. I don't know the date I started a separate shop of mine. I married in 1902. When I opened my shop I had already been married. I had started my shop separately 3—4 years before my marriage. The period of 5—6 years during which I ran my shop with Haji Ibrahim was the period of 5—6 years preceding my starting the separate shop. It was in the Bazarganlar street. I don't know if it is now called Ermo Street. It is in the street between the plane tree and Kioprubashi. The shop of Haji Ibrahim is now occupied by a Greek and adjacent to it was Hji Nouri's shop. Hji Nouri later on moved to the closed market (Kapali Charshi)

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to a shop situate in the street facing that of Tujjurbashi. I don't know how long he stayed. Perhaps a few years or 3—5 years. I don't remember if Hji Nouri kept this second shop until his death. I remember Atta opening a shop opposite that of Hji Nouri. I am 65 years old. If Fadil Eff. says that he (Hji Nouri) had been running business in this shop 65 years ago I say it is not possible. When Hji Nouri moved from the first to the second shop I was running my separate shop but I can't say how long before I had moved there. I don't know if I was married when I moved to my second shop. As a shop neighbour further down I had Hji Mustafa

10 Eff. of Abohor. I can't remember whether it was when I was working with Hji Ibrahim that Ferid used to come to the shop or when I was about to separate from him. He (Ferid) was then between 15 and 20 years of age. Ferid was a little older than I. I don't know who Ferid's father was nor do I know his mother or his brother. I don't know in which house his family lived in his infancy. My companionship with Ferid was when we met at Baklavaji Rifat's shop for a drinking bout. I don't know how many years passed since then. I don't remember. I remember that Ferid was a Foreman at Dilliria when we made bouts at Rifat's. I don't know if Ferid's asking money from Nouri coincides with the time

20 we had drinking bouts at Rifat's. He was then a Foreman and had been stopped. Long after that Ferid became a Railway Officer at Morphou. I had not seen Ferid any more after the drinking bouts at Rifat's shop. Haji Nouri Eff. used to tell that including him there were three brothers. I did not inquire what sort of brothers they were. I don't know if he had sisters. If Fadil Eff. suggests that they were five brothers (or sisters) I don't know. When Hji Nouri said Ferid was his brother's son I did not inquire whether his brother was full, paternal, maternal or a foster brother and I still don't know what kind of brotherhood it was. I know a brother to be a full brother — a maternal or paternal brother.

30 I call a (man) brother in an idle talk. When a half brother he is called step - brother. When not specified we cannot call a paternal or maternal brother a brother, but a step-brother. One wishing to call a maternal brother who happens to pass from the street would call him "brother" and they themselves would know what sort of brothers they were. I did not inquire from Hji Nouri what kind of brother Ferid's father was, when Hji Nouri Eff said this (that Ferid was his nephew) no one except God, he and I were present. I originally am from Nicosia. Vehbi Eff.'s family also may originally be of Nicosia. As I don't remember Muhiddin's father in life I don't know if he was originally of Nicosia. In 1926 I went

40 to Istanbul to bring a dowry. I don't know which month. It was either towards the beginning of summer or spring time. I tripped to Istanbul thrice between 1926-1928. My first trip was in the Spring of 1926. I do not remember on which occasion I came across Muhiddin in Istanbul. My passport is in Nicosia. If my wife is in, I can bring it now. I may ask my children to find and produce it and you may have a look at it. I don't know if my first trip to Istanbul was in 1925—1926. If Fadil Eff. suggests that Ahmed Muhiddin was not in Istanbul when I proceeded there, it is not true. There was no one near Muhiddin except me and Raji. I don't know which club it was or what the name of the club was. I know it

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*Defendant's
Evidence
(continued)*

No. 18.
Evidence
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(continued)

*In the
Sheri
Court of
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Kyrenia
sitting in
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*Defendant's
Evidence
(continued)*

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(Continued)

was a high building but I don't know in which part of Galata it was situate. I have tripped to Istanbul 60 times. I go anywhere that there is a gain in pursuit of my business advantages and don't care about you or anybody else. And although I had 60 trips to Istanbul I cannot say in which part of Galata the club was. Referring to Raji, Muhiddin said: "He is my heir; he is my cousin". I said: "With your permission may I leave, I have some business", and left. 2—3 years ago I had an attack of disease; it may be a paralysis that I had. A slight effect of it is still showing itself in my conversation. Muhiddin Eff. was a Hoja wearing a turban; he was not of the class of people who would take part in the drinking bout at Rifat's. I was a neighbour of Muhiddin living in the same quarter. We were not to embrace each other. We just respected him. Muhiddin's house abutted on Yeni Jami (New Mosque) and our house was at Chukur Bahche. This constitutes our neighbourhood. It is for the Court to believe that Muhiddin said to me: "Raji is my heir". The reason why I remember in full particular the statement of Hji Nouri though 40—45 years have passed since and also the statement of Muhiddin which was made some 20—25 years before, is because the questions put to me are inconsistent with each other. (?)

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ReXXtion: When Muhiddin died, I remembered the conversation that had taken place before and I said in the Bazaar what I knew, i.e. that the heir was abroad. I am not related to Ferid Eff. or any of the persons interested in this case nor do I have any benefit from it.

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Court: Adjourned to afternoon for want of time.

(Sd) A. BURHANEDDIN
21.3.1946

No. 19
Evidence
of Ali
Raji
21st. March,
1946.

No. 19

Defendants case continued.

EVIDENCE of Ali Raji (Defence Witness No. 2)

D.2. Ali Raji, of Nicosia, sworn :

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My name is Ali Raji. I am a District Sergeant Major, Police, Nicosia. I know Plaintiff Atta; also his son Fetthi. I am related to Fetthi through his wife — his and my wife are cousins. I did not know the pensioner Cadi Muhiddin. I used to hear about his sister Ayshe Hanim. I originally come from Larnaca. I heard of Ayshe's death in Nicosia — subsequent to my hearing of Ayshe's death, one day, Fetthi came to the Police Station about her effects. There is a record about it at the Police Station; but I don't remember the date. Fetthi saw me at the Police Station. He said that a certain relation of his named Ayshe was dead and that her jewellery and other valuables had been stolen by her neighbours and maidservants. He said: "Lend me a Policeman, help me." I said, "You should first apply to the Sheri Court and inform them that you are an heir". I had inquired from him and he had said that he had not informed the Sheri Court before. I advised him what steps he should take and he left. A few days later I came across Atta. When I saw him in the Bazaar outside his shop I said to him: "I congra-

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tulate you on the big inheritance you have had from the death of a relation of yours. I saw Ali Edip last night and he said that he also was an heir and that he authorized Salih Aziz Boulli to attend to this matter." I said: "There is a certain Remzi — he also alleges to be an heir" — Upon these words Atta Bey said: "None of these is an heir; the real heir is Raji who is a Police Officer in Turkey but as there are no news from him for the last 15 years he is dead". Then I said to Atta in fun. "Lest that Raji is I" and he said: "We can fix it up between us". Atta then told me about him and Raji's relationship with this deceased woman, i.e. the deceased

10 Ayshe was Raji's relation on the paternal side and he on the maternal and that the estate left was about 4—5 shops, houses etc., valued at about £ 8,000 — £ 10 000. We then parted — 4—5 months after this conversation I saw a stranger in Nicosia. Falling in my duties I have to make inquiries about strangers. When I saw this stranger I asked Salahi Aziz who this stranger was. I first saw this stranger at the restaurant of cook Zia; either on the same or following day I also saw him come out from the shop of Salahi Ali Riza from whom I made inquiries. The stranger I had seen was Hussein Raji now in Court. When I learned who the stranger was I told Salahi Ali Riza what I had heard from Atta.

20 **XXtion:** Fetthi's and my wife are cousins. The conversation which took place near the plane tree was 2—3 days after Ayshe's death. I opened the matter to Atta. My object was to congratulate him. I was not concerned with the matter at all. This was simply a conversation. I did not go there for this matter. I used to pass from there before his death. It is not possible that Atta said to me this, "A certain Raji is I hear alleging to be a relation on the paternal side". On that day I did not make a note of this conversation in my notebook. Atta Bey did not say: "A certain Police officer named Raji from abroad is claiming to be a relation on the paternal side and you on the maternal." The reason why

30 I remember such a lengthy statement though a year passed since, is because I am telling the truth in Court. It is not possible that Atta's words "I am claiming to be a relation on the maternal and Raji on the paternal side" have escaped my attention.

ReXXtion: I am a Policeman for the last 21 years. My duty is to listen to complaints and to commit them to memory and give evidence in Court. Not a day passes without my giving evidence in Court.

Fadil Eff. through Court: All complaints to police are put down in writing.

No. 20

40 **EVIDENCE of Nazife Tahir (Defence Witness No. 3)**

Nazife Tahir of Nicosia, sworn :

My name is Nazife Tahir. I knew Cadi Muhiddin Eff. I was first in the service of Yussuf Ziaf Eff. who was Evkaf Clerk. I then entered

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(continued)*

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No. 20
Evidence
of Nazife
Tahir
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*In the
Sheri
Court of
Nicosia -
Kyrenia
sitting
in Nicosia*

*Defendant's
Evidence.
(continued)*

*No. 20
Evidence
of Nazife
Tahir
21st March,
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(continued)*

the service of Cadi Muhiddin and stayed for 20 years. I sometimes went to Yussuf Zia, but stayed at Muhiddin's. After Yussuf Zia's death I used to live at Muhiddin's house for good. My permanent stay with him lasted 20 years. When his sister Ayshe died I was still with them. I heard many things about her heirs. He used to tell me always about Hussein Raji. She used to talk about Raji and say "We don't hear any news from Raji since he left". She used to say that he was in Istanbul. The Raji she spoke of she used to say was the grandchild of her uncle.

When I was with Ayshe some one came to ask her hand in marriage; it was Pembe Hanim who was sister of Atta. Pembe's visit for a suit was after Muhiddin Eff's death. Pembe had come with a woman whom I don't know. I was there and she asked Ayshe Hanim's hand in marriage on behalf of Atta Bey. Ayshe Hanim said: "I have been unmarried for so many years and I am not going to marry now". We served the guests with coffee and they left. I, then, 2—3 days later went to the market where Atta Bey is. I do hand work with beads and muslin handkerchiefs; and I had gone to Atta Bey to buy beads and cotton threads. When I went to Atta Bey he had suited Ayshe. He said to me: "You will settle this matter for me". I said: "I cannot intervene". He said: "Ahmed Muhiddin died and Arif also left. You are now two people. You may be killed like Sureyya". I had heard a few years before that a certain woman named Surveyya had been killed. When I came back home I narrated to Ayshe what passed between me and Atta. Ayshe then remarked: "If I die is it he who will inherit my estate? Once Hussein Raji is living he will inherit my estate".

XXtion: After Zehra left I stayed with Ayshe Hanim. Arif had brought an action against Ayshe Hanim for his services and obtained a judgment against her. Ayshe Hanim in order to pay this judgment debt mortgaged a shop of hers in the Old Juma Bazaar to me and borrowed money from me. Ayshe Hanim used to tell me that Raji was her uncle's son and this he said after Muhiddin Eff's death; she also used to say so before. I did not ask Ayshe why inasmuch as she had an uncle's son she should obtain a registration of the shop in her name and mortgage it to me. Atta Bey is the son of Ali Eff., a brother of Ayshe and Muhiddin's mother Fatma. Pembe is Ali Eff's daughter. I know Gioulshen Hanim who is a daughter of Fatma's sister. I don't remember and don't know Atta's brother who was in America. I did not know Raji at all; I used to hear of him from my mistress nor did I know Raji's relations. I don't remember Ali Ismet Eff. living. On the day Ayshe died a man named Mehmed Feyzi came down from Lefka and claimed to be an heir, but she used to say that this man was not an heir. When Mehmed Feyzi came Ayshe Hanim was alive and he had asked after her health. I don't know if he came after her death, I did not see him. My mistress died in the presence of Mehmed Feyzi. There was a Hilmi Yiaourtji living opposite Ayshe's house; I did not see him to be present at Ayshe's house; I did not see him to be present at Ayshe's death. My door does not face that of Hilmi's house but it is a bit away from it. Very

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rarely used we to buy yiaourt from him. I did not notice if Hilmi's wife was present when Ayshe died. When Ayshe died Atta Bey, his wife Servet and his son Fetthi came over. I don't know who proposed the sealing up of the house but I know that an attempt was made to seal it up when these people were there. When an attempt was made for sealing up I did not say to Mehmed Feyzi "You are not an heir, Atta Bey is an heir". I so used to hear from my mistress. On the death of Ayshe I packed up and was ready to leave the house. When I packed up Fetthi reported me to the Police accusing me with the theft
 10 of articles and jewelleries belonging to Ayshe. Thereupon woollen cloths and chairs were taken away from my lot and sold together with Ayshe's. I am not cross with the Atta Bey family for having reported me to the Police and for having taken away and sold goods which I claimed to be mine. The reason why I now give evidence is not because Fetthi had reported me. I am stating what I had heard for God's sake.

ReXXtion: With reference to Mehmed Feyzi, Ayshe Hanim used to say "He is not an heir; he is a distant relation".

The Court: Ayshe Hanim in the course of her conversation with me about her relations, used to say that her father was Vehbi Eff. He
 30 (she?) did not tell me who Vehbi's father was. Ayshe used to say that his father had brothers (and/or sisters) but she did not say how many of them there were and what their names were.
 Adjourned to 22.3.46

(Sd) A. BURHANEDDIN
 21.3 46

No. 21

EVIDENCE of Hassan Shevket (Defence Witness No. 4)

(Title and appearances).

Defendant (in 41/45) calls :

D.4. Hassan Shevket of Nicosia, sworn : My name is Hassan Shevket
 30 In the Land Registry office I am registered as Shevket Ibrahim. After having served the Government 45 years I retired as a clerk 1st Grade and I am now a pensioner. I was an accountant when I retired. I am of Nicosia. I knew Cadi Muhiddin Eff.; he was a great friend of mine. Our friendship started in 1900 when he used to get me to translate for him some documents referring to the dismissal of Irfan from the post of delegate of Evkaf. We always used to meet. When a child I used to go to their house. I knew Ferid Eff. well. I knew him of old. When
 40 I was transferred to Famagusta as an Assistant Treasury Clerk, Ferid one day came to Famagusta; he had a letter in his hand addressed to me. When I opened it I saw it was from Ahmed Muhiddin, it bore his signature. I don't have it now; it is lost.

To Court: Fadil Eff. objected to the question of counsel Fuad Bey who asked the witness what was the contents of the letter.

*In the
 Sheri
 Court of
 Nicosia
 Kyrenia
 sitting
 in Nicosia*

*Defendant's
 Evidence.
 (continued)*

No. 20
 Evidence
 of Nazife
 Tahir
 21st March,
 1946.
 (continued)

No. 21
 Evidence
 of Hassan
 Shevket
 22nd March,
 1946.

In the
Sheri
Court of
Nicosia -
Kyrenia
sitting
in Nicosia

Defendant's
Evidence.
(continued)

No. 21
Evidence
of Hassan
Shevket
22nd March,
1946.
(continued)

Fadil Eff : According to the Law of Evidence a witness cannot give evidence on the contents of a document which has not been produced. I object to the reception of such evidence.

Fuad Eff : After the loss of the document has been proved, I allege it is not contrary to law to adduce evidence on the contents of such document.

Court : Asked parties to cite authorities.

Fuad Eff. : Phipson on evidence, 5th Edn. p.516,519. Cases in which secondary.....etc. When the original has been lost etc.

Fadil Eff. : I have a reply to my learned colleague on the authority cited regarding the admission of a secondary evidence on a document lost. Best on Evidence, 9th Edn. p.399. "The accused etc..." The paragraph to which I referred says that the production of secondary evidence on a lost document depends on whether there is sufficient proof that the document has either been lost or destroyed. In the present case — apart from a bare allegation by the witness — not only is there ^{not} before you sufficient evidence about the loss or destruction but no evidence at all, and as it is known to Your Honour the evidence of a single witness is not an evidence to say nothing of the fact that the single evidence tendered is of a witness who proposes to give evidence on the contents of that document, which diminishes the value of such evidence. I therefore object to this witness giving oral evidence on the contents of the document unless other sufficient evidence is produced before you. I cite Phipson On Evidence 5th Edn. p.507 "Private documents must be proved by primary evidence..." p.516, 21. This is about the fact that a witness cannot give evidence on the contents of a document which has not been produced. 10
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Fuad Eff. : It is the first time I hear and this from Fadil Eff., that the Court, excepting the evidence of an accomplice, or of children of tender age or of a wife in a case of breach of contract for marriage, which are laid down in Cyprus Laws, cannot give judgment on the evidence of a single witness and that corroboration of such single evidence is required. Even in murder cases the Court can give judgment on a single evidence. 30

As I have already submitted the best way of proving the contents of a document in Court is the production thereof; but if that document is lost or could not be traced, or if it is in possession of the adversary and could not be produced then the law permits the witness to give oral evidence on the contents of the document. What we allege is that a note was sent by someone to someone; the person who received and read it lost it then and cannot trace it now. Now, it is for the Court to believe the loss and to satisfy itself about it. After this statement the witness is entitled to give evidence on the contents of the document and it is for the Court to value such evidence. 40

Fadil Eff.: One of the cases in which a single evidence cannot be

acted upon is an action against an estate.

Fuad Eff.: We did not bring any action against the estate. I produce an amendment of the C.C.J.O. order Clause 205, where it is stated that a single evidence is sufficient to give judgement. The Court decides to hear the rest of the evidence of Hassan Shevket and postpones that part of it which refers to the contents of the document, so as to be able to consider the arguments of both sides and if necessary to call this witness later again to give evidence on this particular point.

Hassan Shevket continues: I recommended Ferid and he was appointed a Temporary Tithe Officer. I used to see Cadi Muhiddin always. The following year I was transferred to Nicosia and Cadi Muhiddin thanked me for this help. I was transferred to Treasury Headquarters and was in frequent touch with Muhiddin. Muhiddin said: "I am pleased you have had my cousin Ferid employed in the Tithe collection work".

No. 22

EVIDENCE of Mehmed Haji (Defence Witness No. 5)

D. 5. Mehmed Nazi of Nicosia, sworn:

My name is Mehmed Nazi. I am a pensioner. Many years ago I was a Village Roads Foreman; before that I was a Roads Foreman in the Public Works Department for 15 years. Then I got on to the Commissioner's office as Village Roads Foreman. As I was a Foreman, one day in 1900, I saw Cadi Muhiddin. Muhiddin Eff. invited me through Zeki Eff. of Knodara who is my uncle, and I went to the present Sheri Court which was in the same condition as now. I entered Muhiddin's office and sat. Ahmed Ferid, Village Roads Foreman, was in his office. I knew him before; he was a village Roads Foreman and worked with Papetta at Dilliria. He was sitting in the office. Muhiddin said: "Do you know why I have called you here? I understand that you are on close terms with the Chief Foreman Kontopoulos and that your request with him would have weight" and referring to Ahmed Ferid as his cousin i.e. uncle's son (on paternal side) he continued; "I have called you for this: Ferid was a foreman at Dilliria, they stopped him for some reasons. I pray you to mediate and take him to Kontopoulos and give my regards to him and tell him that he is my cousin so that he re-employs him". I took Ferid to Kontopoulos. He said: "All right!" But did not re-employ him.

XXtion: . . This incident took place in 1900. I knew Ferid personally but did not know who he was. I did not know his parents lineage, nor did I know his parents' names. I heard them in this case. Ferid was a Tithe Officer and then took up work in the Railway Department. He did any kind of work. When Muhiddin called me to recommended Ferid he said: This is my uncle's son; a cousin of mine and for this reason I ask your mediation for his re-employment. Muhiddin said: "He is my uncle's son (on the paternal side) — my cousin. Muhiddin Eff. said: "This man is my uncle's (paternal) son — he is my cousin" and this is the truth.

*In the
Sheri
Court of
Nicosia
Kyrenia
sitting
in Nicosia*

*Defendant's
Evidence.
(continued)*

No. 22
Evidence
of Mehmed
Nazi
22nd March,
1946.

*In the
Sheri
Court of
Nicosia -
Kyrenia
sitting
in Nicosia*

*Defendant's
Evidence.
(continued)*

*No. 22
Evidence
of Mehmed
Nazi
22nd March,
1946.
(continued)*

Muhiddin spoke and I listened. I did not add anything to his words. Muhiddin said: "He is my cousin" and further: "my uncle's (paternal side) son". I am sure of it. In our language "cousin" and "uncle's son" mean the same thing. It does not sound strange to me why he should use two synonyms together once both of these words mean the same thing. After that my contact with Ferid was broken as I had left the Office of the Village Roads. In 1901 I was transferred to Paphos and returned to Nicosia six months after. I did not then have any conversation with Muhiddin Eff. in this connection. I remember this conversation after 45 years and when I saw Raji as I was sitting with Fatin at St. Sophia and I learned who he was, and it still occurs to my mind that he used both of the words i.e. "my uncle's son" and "cousin". I insist and say, irrespective of the long time that has passed since, that Muhiddin used both of these two words. It is not likely that Muhiddin used only the words "my uncle's son" or "my cousin" in view of the long time that has passed since. As he had a sympathy for him he used both of the words to lay stress on his expression. I made a statement to the advocate for my evidence. I made it orally and not written. I did not make a written statement. It is not true that I was called in only to-day. Assuming Muhiddin said "The is my uncle's son — a cousin" I cannot say in what way he was his uncle's son and a cousin. In 1922 I was in Nicosia. My uncle Zeki's relation with Muhiddin continued in 1922. I don't remember a turbaned relation of Muhiddin coming from Istanbul in these days. I gave up Village Roads work in 1936. I am 66-67 years old. I retired before 60 years of age. as I was shown over-aged in records. I am a plaintiff in action against Kior Chavoush pending before this Court, and Hakki Suleiman is my counsel. Before this I don't remember bringing an action for pedigree in the Sheri Court, Famagusta, and withdrawing it later. I did not receive a subpoena to come to Court to-day.

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ReXXtion:..I had a conversation with Hakki Bey on the present case; I then saw Fuad Bey 10-20 days ago. I made an oral statement to Fuad Bey. I did not make a statement to Hakki Bey as well.

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*No. 23
Evidence
of Hussein
Mehmed
22nd March,
1946.*

No. 23

EVIDENCE of Hussein Mehmed (Defence Witness No. 6)

D. 6..Hussein Mehmed of Kiomourjou, sworn:

My name is Hussein Mehmed. I am 85 years old. I was born in Nicosia in the Tahtalkala quarter. My father was a gardener. My father had two gardens. One at Tahtalkala and one at Omerieh Quarter where the Electric Power Station is. The place opposite its gate is called "Old Hospital". I busied myself with the garden work when I was with my father. My father then put me in the service of the Imam of Tahtalkala quarter; I was 14/5 years old then. The house of the Imam of Tahtalkala was near a fountain. It is a long time since I had been there. The Imam of Tahtalkala was then married to a wife whose name I don't remember. I used to call her "Hanim Abla". He had children: both girls

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and boys. I remember the names of the children. His first child was Attaoulah who is dead; he had been dead before I went to him so I did not see him. When I entered his service I saw his child Yussuf whose nickname was Sallanbash. The Imam had another child named Ali Eff., Ali had a wife who was Barontjizade's daughter and was called Emine. Sallanbash was not married when I went there; he married after I had been settled in the village. The eldest daughter of the Imam of Tahtalkala was Pembe Hanim, her husband was called Kaymakam and used to deal in lumber and wood in the Kouyoumchilar Bazaar. His house was in the Yeni Jami quarter. His second daughter was Hatije Hanim who was Haji Nouri Eff.'s wife. Haji Nouri lived near the Saray Square, the ground storey of which is now a shop. Another daughter of the Imam was Fatma Hanim who was the wife of Vehbi Eff. When I was in the service of the Imam, Vehbi had two sons and another child in the cradle. One of his sons was called Ahmed. I think the one in the cradle was a girl. Haji Nouri had another child named Houloussi from another wife, but he had died before long. Vehbi was first an Imam of the Yeni Jami mosque — he then became a clerk. Haji Nouri and Vehbi were brothers—they were three brothers, the third one being Fahreddin who was the eldest son, second in age was Haji Nouri and the youngest was Vehbi Eff. I saw Fahreddin and know him; he was wearing a turban and gown. I don't know who the father of Vehbi. Fahreddin and Haji Nouri was; I don't remember him in life; but I hear that he was called Osman Eff. Fahreddin had fallen ill and proceeded to Istanbul and did not return. Fahreddin was married at my time and before going to Istanbul. His house was near the Bath in Omeriye quarter. His wife was called Zuriye Hanim, who had children, I think there were five of them but I was not hearing their names. She had two boys, I came to know it because they bought vegetables from my father and I used to carry these for them. I knew them before going to the house. When Fahreddin left for Istanbul I had not yet entered the service of the Tahtalkala Imam and I used to go to Zuriye's house even after I had entered the Imam's service. Haji Nouri used to help her by sending provisions in a basket which I used to take myself. I did not take baskets to Zuriye from other people as well. Haji Nouri used to send a basketful of provisions to Zuriye. The reason why Haji Nouri used to purvey Zuriye was because she was left a widow after Fahreddin's death. I don't know the name of Fahreddin, Vehbi and Haji Nouri's mother. As for their father's name, I had heard it from Haji Nouri. I stayed with the Imam for 4-5 years and then left for the village of Kiomourjou. I sometimes used to come to Nicosia from Kiomourjou, on which occasions I chanced to visit these houses. Zuriye was a blue-eyed tall woman with a fair complexion. Vehbi had a fattish virgin girl in his service who was older than I. I don't remember her name. I saw her recently in the street and recognised her. I can identify her now if I see her. I was circumcised in the upper storey of Mufti Ziyaeddin Eff. I was circumcised together with my elder brother and Mustafa and Mehmed, the sons of Shukri. After Cadi Muhiddin's death some people came to the village and asked me something; it was Atta Bey. In my

*In the
Sheri
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Kyrenia
sitting
in Nicosia*

*Defendant's
Evidence.
(continued)*

*No. 23
Evidence
of Hussein
Mehmed
(continued)*

*In the
Sheri
Court of
Nicosia -
Kyrenia
sitting
in Nicosia*

*Defendant's
Evidence.
(continued)*

*No. 23
Evidence
of Hussein
Mehmed
(continued)*

conversation with Atta I told him something; I had told him what I have told the Court. Atta did not say anything. He said to me: "Think over and come" (to see me). I have taken an oath on the Quran and in what I have said in Court there is not a lie.

XXtion:..When Atta Bey came to the village Fadil Eff. and Sallanbash Yussuf's adopted son Mehmed Hayreddin were with him. I know Mehmed Hayreddin by the name Mehmed. Atta said to me: "think over and come". It is true that Atta said to me "think over and come", as I did not know anything. Fadil Eff. also put me questions there but he left cross; it is not true that Fadil Eff. asked me about the girls of the Imam of Tahtalkala quarter and I said "I don't know them". It is not true that Fadil Bey suggested to me that the Imam of Tahtalkala had a son named. Attaoullah and that I said: "I don't know". It is not true that I said to Fadil Eff. "I was not allowed to mix myself with the Imam's daughters" It is not true that I said to Fadil Eff. "My master used to send me to the door of Vehbi's house but I was not let in". It is not true that I said to Fadil Eff. I did not remember Vehbi's personality. I don't know what was I to think over when Atta Bey said to me, "Think over and come". Atta Bey said to me, "think over well", but this was not with reference to the Imam's family. When Atta and his companions came to the village the villagers brought chairs and we sat in front of the door and what we talked we talked sitting. As I sat and talked my co-villagers were present.

Pembe's house was on the northern side of the Yeni Jami and it is the street leading direct to Haydar Pasha quarter. Pembe had a son who died in Cyprus. I did not hear his name. I was in Nicosia when he died. Pembe had no child other than this. Pembe also had a daughter named Gioulshen. Pembe was tall, with black eyes and eyebrows. I don't know how long it is since Pembe's death. When I left for the village she was in life. I was then 20-25 years old. I was born in Nicosia and subsequently went to the village where I stayed for some time. I entered the service of the Tahtalkala Imam twice: on the first occasion I was 14-45 years old and on the second I was 12-13 years. The second time when I was 12-13 I stayed in the Imam's service for 1-2 years and a year after I again entered his service when I was over 15 years old. As Yussuf was going to take animals for sacrifice (kurban) (to Nicosia), he asked me to assist him and so I entered the Imam's service and left before completing a year. After that I did not get into the Imam's service. I stayed at the village. I used to hear that the Imam of Tahtalkala had a brother in Istanbul. I don't know if he had any other brother. This brother of his was called Hoja Eff. I don't know if he had any other brother in Cyprus. If the relations say that there was one brother, Vehbi, and one sister, Fatma, I say the truth is what I have stated. Hji Nouri had a child named Houloussi, who is dead; he had no other child. I did not hear him have another child from another wife called Zehra. It is not true that I did not count Vehbi's brothers when Atta Bey came to me. Why should I give Fahreddin's and Hji Nouri's names. They (Atta and others) left. I don't know if Vehbi had sisters. I don't remember Fatma in her maiden

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age in her father's house; I knew her when she was married. I also came to know Hatije when she was already married. Fahreddin left Cyprus in the Ottoman times; I can't say how long before the British occupation of Cyprus it was. When I entered the service of the Tahtalkala Imam at the age of 14-15, Fahreddin was not in Cyprus, nor was he in Cyprus when I re-entered at the age of 12-13. I knew Fahreddin since the time I stayed with my father. I heard from Haji Nouri and everybody that Fahreddin was a brother of Hji Nouri and Vehbi. When a child Fahreddin used to call Hji Nouri and Vehbi "my brother". I asked Hji Nouri how they were brothers before entering the Imam's service. I used to shop muslin from him and when I went to buy muslin he used to say "Fahreddin is my brother". I shopped muslin for my father. Haji Nouri used to say to me "Hello, come in" and we used to chat for an hour and he used to tell me that Fahreddin was his brother. He was telling that Havva Mulla or Ayshe Mulla were his sisters. When I shopped from Hji Nouri, to my knowledge, he was married. Hji Nouri used to live in a house behind the Saray Square, in its ground storey there is a shop now. I don't know if he lived somewhere else before nor do I know Vehbi lived somewhere else than the house at Yeni Jami. If Fadil Eff. suggests that Hji Nouri lived at Yeni Jami quarter and Vehbi at Laleli, I don't know. I knew Fahreddin before getting into the Imam's service the first time. When he was a child. I had to pass from in front of their door. Before entering the Imam's service I did not move to the village. I did not return to Nicosia after my removal to the village. It is not true I said to Fadil that I had entered the Imam's service before removing to the village. I was about 8-10 years old when Fahreddin left for Istanbul. Fahreddin had not yet left for Istanbul when Hji Nouri told me that Fahreddin was his brother. Hji Nouri told (me) at that time and also later that his father was Vehbi and further when I got into the Imam's services. Hji Nouri did not tell what was the name of his father's father. I only heard from Haji Nouri that his father's name was Osman. I asked Hji Nouri what kind of brotherhood he had with Vehbi, and he used to say even before I asked him that they were full brothers, but I don't know his mother's name. As Haji Nouri had told me that his father's name was Osman and that Fahreddin was his brother, from this I concluded that Fahreddin's father was Osman.

Court: Adjourned to afternoon.

Examination of Hussein Mehmed Kiomurju continued:

I am not doing any work; if I find work I work as much as I can. Shall I sit idle? Our village is small and labourer's work is rare. I used to be a wood seller and farmer before. For a case of wood I went to prison thrice. Last year an old woman was killed in the house adjoining mine and the Police had arrested me.

ReXXtion:

The Police arrested me — I was her neighbour. I don't know why I was arrested. 3-4 people more were arrested, but I stayed at the Police

*In the
Sheri
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—
Defendant's
Evidence.
(continued)*

*No. 23
Evidence
of Hussein
Mehmed
(continued)*

*In the
Sheri
Court of
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Kyrenia
sitting
in Nicosia*
*Defendant's
Evidence.
(continued)*

No. 23
Evidence
of Hussein
Mehmed
(continued)

Station for less than half a day. The other people arrested were also her neighbours. The wood cases were for cutting wood from mountains without a permit. My father was originally a Nicosia man and he was called Omeroghlu; his name was Mehmed. My father had two gardens. To my knowledge one of the gardens was being looked after by Salih and the other was at a place where the Electric Power Station now stands. The gardens were the property of my father and we used to live in the garden. My father sold the gardens and finished the money in gambling. My father did not go to any village or to Kiomourjou before the gardens were sold. After the sale of the gardens my father and I lived for a year in Nicosia and then my father moved to the village. My mother was from Kiomourjou where she had property and so my father went to Kiomourjou. I was 15-16 years old when my father removed to Kiomourjou after a stay of one year from the sale of his gardens. Before I was 15-16 years old and before my father had settled at Kiomourjou I myself went to Kiomourjou but it was after (before?) my father had moved there. When I first went to the village for the first time I was in the service of the Tahtalkala Imam and I think I had been there for about two years. I then went to the village again. I came to Nicosia to bring animals for Qurban (sacrifice), and Yussuf Sallanbash took me again to the house of the Tahtalkala Imam and I remained with him. On this occasion I think I spent a year there. In all, taking all the periods of my stay into consideration, I think I spent nearly four years in the Imam's service. I used to carry water from the Omerieh to the garden and I had to pass by the house of Fahreddin. I used to take provisions to his house and so I knew Fahreddin. When I was in the service of the Imam, Haji Nouri used to send provisions to that house because Haji Nouri's wife was a daughter of the Tahtalkala Imam.

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No. 24
Evidence
of Hatije
Abdurezak
22nd March,
1946.

No. 24

EVIDENCE of Hatije Abdurezak (Defence Witness No. 7)

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D. 7). Hatije Abdurezak of Nicosia, sworn:

My name is Hatije Abdurezak. I am 92-93 years old. I was born at Magounda. I then came to Nicosia. When I came to Nicosia I was 14 years old. I was given to Vehbi Eff. as an adopted daughter; he was married at the time; his wife was Fatma Hanim. There were three children at the house, whose names I remember. One was Ahmed Eff., the other Atta and the smallest one was Ayshe Hanim. Ayshe was a child in cradle when I went there. Atta died at the age of 2-3. Vehbi had brothers: one was Haji Nouri Eff. and the other Fahreddin Bey and he also had sisters; one of them was Havva Mulla who was a schoolmistress, the other one was Ayshe Mulla and the eldest one was Sheriff Mulla. The eldest of the brothers was Fahreddin. Vehbi's house was at Yeni Jami. Haji Nouri lived in his house opposite Saray Square. Fahreddin lived in a house near the Hizir Mosque opposite the bath. Vehbi's wife was Fatma Hanim. who was a daughter of the Tahtalkala Imam. Haji Nouri's wife was Hadije who was also the daughter of the Tahtal-

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~~kala~~ Imam. Fahreddin's wife was Zuriye. Fahreddin and Zuriye had five children: Nesibe, Atiye and Mounteha and also his boys Mehmed Bey, Ferid Eff. and Mehmed Edip. Fahreddin, Haji Nouri and Vehbi were full brothers and their father's name was Osman and their mother's name was Fatma Hanim. Fahreddin had gone to Lefka as he had property there. There he fell ill and left for Istanbul for an operation and two or three months later he died. He died after the operation. My master received the news of his death and told us. It was on the eve of a Bairam when we received the news and before these news we had bought henna.

10 My master Vehbi was a Clerk to the Cadi; before that he was an Imam of Yeni Jami mosque. Vehbi died before Haji Nouri. Vehbi died of a shock. The Cadi called him to tell him something that £100 were stolen from the drawer and he died of shock.

XXtion: I was 14 years old when I came from Magounda. I am now 92 years old. I cannot assume that I came to Nicosia 80 years ago. I was betrothed at 20 and married at 25. I stayed with my master for five years after my betrothal. In all I stayed in my master's home for 5—6 years. I stayed with my master for six years in all — taking into consideration the time spent before and the time spent after my betrothal.

20 My husband was Mehmed Eff. It is 4-5 years or more since my husband died. After my marriage I went to Rhodes where I stayed 35 years and when Italy took it over I came back to Cyprus. We went to Rhodes when it was in the hands of the Ottoman Empire and I had then been two years married. I was still with my master when Fahreddin died and had been there 5-6 years. I used to go and do their work until two years after my marriage. When I entered Vehbi's service in Nicosia he had then three children. Atta was then two years old. Ahmed Eff. was 5-6 years old and even mora and Ayshe was in the cradle, which was made of wood. If his relations come to court and said that he had

30 two children, I say that my statement is correct. When I came to Nicosia Haji Nouri was married with Hatije. I don't know his first wife nor do I know his children from his first wife. I don't know where Vehbi lived before marrying; I came and found him in the Konak. My master and mistress were weeping as I prepared coffee for them and were saying that Vehbi, Haji Nouri and Fahreddin were brothers born of the same parents. My master used to say: "My father's name was Osman and my mother's Fatma" and this is how I know it. I heard it. Haji Nouri's father — full father — was one — he had one father. When they spoke of 'same parents' they were referring to Hji Nouri and Fahreddin and they wept and I used to hear it. Haji Ahmed was my master's relation

40 but I did not ask what was their relation. I did not hear Fahreddin being Hji Ahmed's son. Fahreddin was ~~not~~ Hji Ahmed's son and he used to say that Hji Ahmed was his relation. Vehbi was smaller than Haji Nouri by 5-6 years: he was the eldest of them and they called him "agham" (my elder brother). If Fadi' suggests that Fahreddin was 8 years younger than Vehbi I don't know that. I did not hear.

ReXXtion: . I was given from the village to my master at my 14

*In the
Sheri
Court of
Nicosia -
Kyrenia
sitting
in Nicosia*

*Defendant's
Evidence.
(continued)*

*No. 24
Evidence
of Hatije
Abdurezak
(continued)*

*In the
Sheri
Court of
Nicosia -
Kyrenia
sitting
in Nicosia*

*Defendant's
Evidence.
(continued)*

and I stayed with him until I got married. From the three brothers (Fahreddin, Vehbi and Hji Nouri) the eldest was Fahreddin; and when I also saw them Fahreddin looked to be the eldest.

Adjourned to 17th April, 1946, 10 a.m.

(sd) Ahmed Burhaneddin.

Sheri Judge.

No. 26
Court
Decision
on point
of Evidence.
5th June,
1946.

No. 25

COURT DECISION on point of Evidence

5—6—46.

The objection of Fadil Niyazi Eff., counsel for the first party, to the evidence of Hassan Shevket, a witness for second party in the course the hearing on 22nd March, 1946, with reference to the contents of a letter alleged to have been sent to him by Cadi Ahmed Eff., which he (witness) said: "it does not exist now and it is lost", and the arguments of the other party having been considered by the Court it rules that as no sufficient evidence has been adduced for the loss or destruction or that a thorough search has been made therefore, this witness cannot give evidence on the contents of the document; but the other party is at liberty to examine him on other points already stated by him in his evidence.

(sd) A. Burhaneddin.

No. 26
Evidence
of Pembe
Hassan
5th June,
1946.

No. 26

EVIDENCE of Pembe Hassan (Defence Witness No. 8)

Action 41/45

2nd Party calls:

D. 8) Pembe Hassan, of Nicosia, sworn.

My name is Pembe Hassan. I am from Nicosia. I am married — am a housewife. My husband is Hassan Ombashi of Episcopi. We live at Episcopi. In Nicosia we lived at the Laleli Jami quarter. Havva Mulla of Nicosia brought me up. I was an adopted daughter of Havva Mulla to whom I was given by my father Haji Ahmed, the Yaghourtji, when I was 5 years old. Havva Mulla brought me up and married me off in her house. I was 14 years old when I married. I stayed with Havva Mulla until her death; her body was taken away and then I left. Havva Mulla had three brothers and three sisters. His brothers were Hji Nouri, Fahreddin and Vehbi — these were full brothers. Her sisters were Sherif Mulla, and Ayshe Mulla, the youngest being Havva Mulla. From her brothers I only remember Haji Nouri Eff. in life; I don't remember Vehbi and Fahreddin. From the sisters I remember Ayshe Mulla and Havva Mulla in life. For the brothers and sisters whom I don't remember Hji Nouri Eff., Havva

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Mulla and Ayshe Mulla used to say that they were full brothers. When I was adopted by Havva Mulla she was unmarried and without children. Havva Mulla was a widow and she said that her child or children had died. She used to teach children. When she took me she was about 60 years old. I know a certain woman named Mounteha; she had a son named Remzi. Mounteha was mentally disordered. Mounteha used to frequent Havva Mulla's house and she used to call her "Aunt" (paternal). I heard from Havva Mulla that this Mounteha was Fahreddin's daughter. Havva Mulla served her with food and sometimes paid her money. As Mounteha was mentally

10 deranged she used to shout in the street — near the Police Station, and when she came to Havva Mulla, the latter said: "Welcome, why were you shouting last night — "You disgraced all our family; why were you shouting and saying 'my son Remzi'?" Havva Mulla and I used to go to the house of former's brother Haji Nouri on Thursday after closing the school and stayed there until Saturday morning. As Ayshe was not running a school she used to stay at Haji Nouri's house longer. A certain Ferid used sometimes to come to Havva Mulla's house. Ferid Eff's visits were not welcomed as he was a habitual soaker and gambler and therefore he came rarely. When Ferid came to Havva Mulla's house he used to call

20 her "aunt" (paternal). He came on Holidays and at Bairams to wish good bairam, but as he was a soaker she did not encourage him so much. Havva Mulla used to say that Ferid was Fahreddin's son and brother of Mounteha. Havva Mulla and Ayshe Mulla used to say so and I heard it. When I and Havva Mulla visited Haji Nouri at his house conversation used to take place about Ferid there. Ferid asked money from Haji Nouri and gambled it away and he said: "He came and asked for money again — he will not stop gambling" This he said to his sisters Ayshe and Havva Mulla. His house was at the Saray Square and he used to talk it over in the bedroom down-

30 stairs. Haji Nouri used to say "You see my other brother Vehbi's son has become a man and took the place of h's father" and for Ferid he used to say, "he will not become a man from now on."

Mounteha had sisters: They were Kanbour and Nessibe. There was also an Aliye but I don't remember these. Nassibe and Aliye used to come always to Havva Mulla's house and these also used to call Havva Mulla "aunt" (paternal); and they used to complain to Havva Mulla about their brother that he had not been a man and Havva Mulla said "What can we do, some children turn out degenerate". Havva Mulla used to say that his father was Osman. From those whom I remember Haji Nouri Eff. died first; I was not yet married then. Haji Nouri died two or

40 three years before my marriage. I attended his funeral. Then Ayshe Mulla died without an issue. At the death of Ayshe I was married. She died three or four years after my marriage. I was then at Episcopi. I had heard that Havva Mulla was ill and alighted at her house; she was ill over her sister's death; and it was Havva Mulla herself who said that her sister was dead.

The last to die was Havva Mulla. Havva Mulla was confined to bed for three years before her death: her legs couldn't support her body, and

*In the
Sheri
Court of
Nicosia
Kyrenia
sitting
in Nicosia*

*Defendant's
Evidence.
(continued)*

*No. 26
Evidence
of Pembe
Hassan
(continued)*

*In the
Sheri
Court of
Nicosia -
Kyrenia
sitting
in Nicosia*

*Defendant's
Evidence,
(continued)*

*No. 26
Evidence
of Pembe
Hassan
(continued)*

during this period of three years I looked after her and used to stay with her always. At night Ahmed Eff. used to send her food. During Havva Mulla's sickness Ahmed Muhiddin and his sister Ayshe Mulla used to frequent her house. Before Havva Mulla's sickness, she and I used to go to Ahmed Muhiddin's and Ayshe Hanim's house. When Havva Mulla died Ahmed Muhiddin Eff spent for her funeral. Havva Mulla after her death left £2 worth goods in her house which Ahmed Eff. caused to be sold; and as the money they fetched was not sufficient for the funeral expenses Ahmed Muhiddin Eff made it up. She was poor; engaged in teaching. I lived with Havva Mulla for about 19 years.

XXtion: I am married. My husband is living at Episcopi — he is a grocer. Originally my husband came from Episcopi and I from Nicosia. I am from Laleli Jami quarter. My father was Yoghurtji Haji Ahmed and used to sell yaourt in a tray over his head. My father is not a Cypriot. I am now 54—55 years old. My father took me to Havva Mulla when I was five years old and stayed with her for nine years until her death. My husband having been accepted to her house as bride-groom I stayed with her for 3 years and (then) left for Episcopi. I and my husband used to go to this village as my husband had property there. When Havva fell ill I came down to Nicosia with my effects and stayed at her house. I stayed with Havva Mulla for 19 years. Havva Mulla's house had three rooms in one of which I used to stay with my husband; in the other Havva Moulla stayed and the third one was used as dining room. Even before my marriage the allocation of the rooms was the same. During this period of 19 years there was no one else living in Havva Mulla's house except me. There lived there her adopted daughter Pembe but Havva Mulla had married her off before I went there and when I went to Havva Mulla her adopted daughter had had children. Pembe is dead; her husband's name was Hassan Dayi of Lapithos who looked after water channels. I remember them staying in Havva Mulla's house as husband and wife — they lived there when I was a small child and when Havva Mulla decided to marry me she sent them away and I was settled there. My name also is Pembe and my husband's name is Hassan. It is not true that Havva Mulla brought up a girl called Pembe, that she married her to a certain Hassan and that Pembe died. It is 27 years since the death of Havva Mulla; and she had married me off ten years before her death. Pembe and her husband left Havva Mulla's house and I married into there. It is not true that Pembe who lived in Havva Mulla's home was the other Pembe and Hassan was the other Hassan. In the house adjoining that of Havva Mulla there lived an usheress named Fatma Kadin; there was a communicating door between the two houses through which one could come into Havva Mulla's house. This woman was not attending Havva Mulla before the latter's sickness as she could walk about. I knew this Fatma was brought up by Haji Niazi Eff.; she died long ago; I know Fatma used to visit Haji Niazi Eff.'s family and the latter used to visit Fatma Kadin. Ayshe Mulla lived in a house beyond ours. When I came to know Ayshe Mulla she was a widow and each room of her house was leased and she was not staying in her home constantly but went to her brother's Hji Nouri and to Vehbi's son Ahmed

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Muhiddin. Ayshe Mulla died in Ahmed Muhiddin's house. When she stayed in Ahmed Muhiddin's she used to lock up her house; the room in which she lived. I know that Sherife, the wife of Tabour Imam, was brought up by Ayshe Mulla. This Sherife had a son named Hafiz Refet. Lately Ayshe Mulla had accepted Refet and his wife to her house as inmates. Hji Nouri had a shop; as I was not usually going out, I don't know where his shop was. I did not know where Ferid was living even when I lived with Havva Mulla. Mounteha lived in Omerieh quarter since the time I went and stayed with Havva Mulla. Mounteha was poor and went about begging. Havva Mulla's house was her own property and she made it over while still in life to Baroutjzade Ali so that the latter should ^{look} after her. Ali Eff. was Havva Mulla's cousin. Haji Nouri died two or three years before I married, i.e. when I was 11—12 years old. Ahmed Muhiddin had undertaken the administration of Ayshe's estate. I don't know what has become of it as I was living at the village. She had effects. I don't remember Ayshe Mulla's husband. I heard from her that her husband was Jezayirli Hoja. Sherif Mulla's house was the opposite side of Havva Mulla's house. I don't know Sherif Mulla's house. I did not hear the name of Havva Mulla's mother. Besides Mounteha, Ferid had Nessibe and Aliye as his sisters but he had no brothers. I am telling what I had heard. I did not hear if Ferid had a brother, shoemaker by occupation, named Mehmed. I don't know who Ferid's mother was. When Haji Nouri was in life, Ferid's mother may have been living at the same time as well; but I don't know. If during the period I referred to Nessibe Aliye and Feride were not living in Omerieh quarter but somewhere else, it may be that they lived in Omerieh as lessees and afterwards evacuated their premises. Havva Mulla, Ayshe Mulla and Hji Nouri Eff. talked about Fahreddin amongst themselves and I heard from them that he was their brother; and Hji Nouri as well used to say so to his sisters Hava and Ayshe Mulla: "This boy is a trouble to us; you see, Ahmed Muhiddin has grown up a man and occupied the position of his father while Ferid did not turn out a man" From this I understood that Ferid was her nephew and also made out from Nessibe, Aliye and Mounteha's addressing Havva Mulla as "aunt". Excepting these conversations originated from Ferid's request for money and gambling away his money. I don't know either Ferid's father Fahreddin as he was dead at the time — Fahreddin's father was Osman Eff. Havva Mulla used to tell me that her father was Osman Eff. but she did not tell me particularly that Fahreddin's father was Osman Eff. They used to say that Havva Mulla's mother whom I did not know had not married any other husband — Havva Mulla used to say: 'It was fated for me to marry two husbands though my mother married only one'. I don't know if Vehbi and Havva Mulla's ^{MOTHER} was the same as Fahreddin's mother. I was not in Nicosia when Mounteha died. I did not receive a subpoena to attend the Court today. This is my first attendance to Court. I was not here on previous sittings of Court. Raji heard that I was brought up there and he came to me at the village seven months ago. As I was not called I did not come to Court in previous sittings.

Re XX tion: I came to Nicosia before in connection with this affair

*In the
Sheri
Court of
Nicosia -
Kyrenia
sitting
in Nicosia*

*Defendant's
Evidence.
(continued)*

*No. 26
Evidence
of Pembe
Hassan
(continued)*

In the
Sheri
Court of
Nicosia -
Kyrenia
sitting in
Nicosia
Defendant's
Evidence
(continued)

and made a statement in the office (of advocate). I heard from them how many brothers and sisters Havva Mulla had; they were three brothers and three sisters. I heard it from Ayshe Mulla, Haji Nouri and Havva Moulla, and further that they were born from the same parents and that their father's name was Osman. I did not hear their mother's name. When Ferid came to the house I hid myself and was not seeing him as at that time girls covered themselves from men. I don't know what relationship existed between Havva Mulla and Ali to whom the former gave her house. I heard from Havva Mulla, Ayshe Mulla and Haji Nouri that Fahreddin had died in Istanbul. They said: "He left Ferid to be a pest to us." My mother's name is Bedriye.

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No. 27
Evidence
of Ahmed
Haji Hafiz
5th June,
1946.

No. 27

EVIDENCE of Ahmed Haji Hafiz Hassan (Defence Witness No. 9)

D. 9) Ahmed Haji Hafiz Hassan of Nicosia, sworn:

My name is Ahmed Haji Hafiz Hassan. I am 77-78 years old. I know Ayshe Mulla, Ayshe Mulla was the sister of Havva Mulla, Sherif Mulla, Vehbi Eff., ^{Haji Nouri Eff.} and Fahreddin Eff. My mother's name was Sherife. My mother was brought up by Jezairli Hoja and his wife Ayshe Hanim. I used to address Ayshe Mulla as "Grandmamma". This information I now give to Court is based on the fact that one day I and my mother had gone to Jezairli Hoja's i.e. to Ayshe Hanim's house and as I gave them trouble there, my mother proposed to send me to Havva Mulla's house and I said: "No, I won't go to a stranger's house". My mother then said, "she is not a stranger, she is the sister of your grandmamma", and I went to Havva Mulla and said to her: "Are you a sister of my grandmamma" and she replied, "I, Sherif Mulla, Vehbi Eff., Haji Nouri Eff., and Fahreddin Eff., who is abroad, are all brothers and sisters."

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XXtion:

Hafiz Refet is my brother; he is 5-6 years older than I. Jerayirli Hoja dedicated his house as vakf to my mother, on her death the house would pass to Refet and on his death to me. I don't know if my brother Hafiz Refet and his wife Ayshe Mulla were accepted to and lived in Ayshe Mulla's house. I was about 7-8-9 years old when I behaved naughtily and was sent to Havva Mulla's house. I don't know if I was already circumcized at the time. I attended the school and had gone through the Qoran. I was 5, 6, 7, 8, 9 years old and it usually took a long time to go through the Qoran. My memory when attending school was moderately strong. My conversation with Havva Mulla took place 70 years ago; and it was my first meeting with her at her house; I did not know her before. It was 1-2 donums from Ayshe's to Havva Mulla's house. Havva Mulla lived on the corner of the street turning from Laleli Jami and at the other end was the house of Ayshe Mulla and yet I did not know Havva Mulla. I did not know Vehbi and Haji Nouri as well nor Fahreddin. What Havva Mulla told me about her brothers and sisters is what I have stated in Court and this is

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all that I know about their relationship and nothing else. I don't know who the father of Havva Mulla and Ayshe Mulla was, nor did I inquire about it. I did not inquire about Vehbi and Haji Nouri's father either and don't know him and I did not inquire about Fahreddin's father and don't know who he was. When she counted her brothers and sisters to me I said: "Pooh! how many of them?" When I grew up I made personal acquaintance with Vehbi Eff., Haji Nouri Eff., and Sherif; but I did not personally see a certain Fahreddin so far; and so far there has not been any conversation to the effect that these sisters and brothers were full brothers and sisters and up to now I don't know it. If my brother Refet said in his evidence that Vehbi's only brother was Haji Nouri he must have said so unwittingly. I am an Imam. I used to wash the dead, but I am not a dead-washer as I am too busy. If no one is available to wash a dead body then religion imposes the washing imperatively. I am not a Hafiz (knowing Qoran by heart). My brother Refet was a student of Jezairli Hoja and is a 'hafiz'. I don't know when Ayshe Mulla died, nor do I know when Havva Mulla died. I cannot either say when Sherif Mulla died. I don't remember when Haji Nouri died nor when Vehbi died. I don't know when my father — may the mercy of God be upon him — died as I have not noted the date nor did I note the date of my mother's death and so I don't know it.

Re XX tion: NIL.

*In the
Sheri
Court of
Nicosia —
Kyrenia
sitting in
Nicosia*
—
*Defendant's
Evidence
(continued)*

No. 27
Evidence
of Ahmed
Haji Hafiz

No. 28

EVIDENCE of Mehmed Arif (Defence Witness No. 10)

D. 10) Mehmed Arif of Nicosia, sworn:

My name is Mehmed Arif. I am a Sheri Court Clerk, Nicosia. Ayshe Hanim Vehbi is dead; her estate is registered under No. 8/1945. We sold the estate and lodged the money in the Orphans Estates Fund. In the file there is a notice dated 14.4.1945 blue — numbered 9 — signed by Remzi Yussuf. In this notice it is alleged that the nephew (uncle's son) of the deceased Ayshe Hanim had a son named Ferid who is dead and that the latter has a living son named Raji and a daughter Feride. I don't remember informing Atta Bey of this — nothing official was written to him. Before this notice was received Atta Bey came and informed the office that he was an heir of the deceased Ayshe. After Ayshe's death the Mukhtar of St. Sophia issued a certificate blue 2 according to which Ayshe Hanim died on 8th April, 1945. Remzi Yussuf's notice is dated 12th April, 1945. I don't remember informing Atta Bey either in writing or by word of mouth. Blue 2 is a certificate of her death and of her heirs based on inquiries — it is dated 10 April, 1945. This certificate is signed by Hassan Hji Hussein the Mukhtar of St. Sophia. I produce Blues 2 & 9.

Blue 2 marked M.A. (1)/5.6.1946.

Blue 9 marked M.A. (2)/5.6.46.

No. 28
Evidence
of Mehmed Arif
5th June,
1946.

Exhibits
M.A.I. & 2

*In the
Sheri
Court of
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Kyrenia
sitting in
Nicosia*

*Defendant's
Evidence
(continued)*

Muhiddin died before Ayshe Hanım. There is no record of his estate. Ayshe Hanım left movable and immovable property. The title deeds of immovable properties stand in the name of Muhiddin, Ayshe and their mother Fatma Hanım Mustafa.

I produce the title deeds.

Nos. 89, 90, 91 situate in Iplik Bazaar quarter.

Nos. 56, 64, 55, 1004, 405 in St. Sophia quarter.

No. 140 in Omerieh quarter.

Marked M.A. (3)

*Exhibit
M.A. (3)*

There is not any deed of dedication (vakif name) registered in the Sheri Court, Nicosia with regard to Cadi Muhiddin's properties after his death. 10

*No. 28
Evidence
of Mehmed Arif
5th June,
1946.
(continued)*

XXtion:

Before the receipt of blue 9 in Court the estate had been taken control of; because blue 2 stated that there is an heir absent in America; even without any other notice this document would be sufficient for the Court to take control of the estate. In the meantime Atta and his son came and informed the Court that there was an heir absent in America. In order to take control of the estate of a deceased person a notice is required from the Mukhtar that the deceased has a minor or absent heir. Had a notice been given that Ahmed Muhiddin had an absent or minor heir his estate would have been taken under control. As an estate officer it is not within my knowledge if there are any other title deeds besides those produced by me. I don't know if there are any properties which passed to Ayshe Hanım after Muhiddin's death. The rents of the shops are collected by the Court. There is a shop in Korkut Eff., quarter the rent of which is collected by the Court — it is registered in Ayshe Hanım's name and its title deed is included in those produced. 20

ReXXtion: Remzi did not come to inform me of the absent heir. Documents produced were lodged in the Sheri Court Registry and placed in the file. After the receipt of Remji's notice I told Atta that another one was also claiming to be an heir and that the heir's name was Raji. 30

*No. 29
Evidence
of Abdullah
Dervish
5th June,
1946.*

No. 29

EVIDENCE of Abdullah Dervish (Defence Witness No. 11)

D11) Abdullah Dervish of Nicosia, sworn:

My name is Abdullah Dervish. I live in Nicosia and do auctioneering. I remember the death of Ayshe Vehbi. The Sheri Court had had her effects sold in the presence of Mehmed Arif Effi who was there in his official capacity on behalf of the Sheri Court. I was present at that auction. The second day of the auction the street door was closed. We gathered there to buy things. On the arrival of Mehmed Arif the door opened. 40

Inside were Mehmed Atta, his son Fetthi and people who looked after the articles and a certain Halil Agha. We and Atta kept near the door. By saying "we" I mean myself and auctioneer Assaf. Mehmed Atta complained that the children of the quarter were destroying the trees and flowers and I said "They will grow again". I said to Atta "there is a talk about Remzi asserting that Raji Bey of Istanbul is an heir. What do you say on this". Atta said: "There was a heir named Raji but he is dead. At present I am the heir". Assaf was also hearing him. Then we got in and the sale began.

10 **XXtion:** I am a dealer in secondhand articles. I have no shop. The articles I buy I usually place in Yussuf Zia's shop. Assaf is my partner and he also puts the articles bought in Yussuf's shop. I don't know how many days after Ayshe's death this auction took place. I don't know the date of Ayshe's death; I only heard that Cadi Muhiddin's sister was dead. I went to the sale the second day's afternoon of the auction. About 20 days before I had heard about the rumour of Remzi. I heard the rumour at coffee-shops and not from Remzi. People talked about it in the cafes giving the name of heir as Raji and I heard it. I did not know Raji up to then. On the complaint of Atta about the destruction of flowers, as I had
20 heard about Remzi's assertion, I asked Mehmed Atta about it. My conversation with Atta took place in the garden about 10 paces inside from the street door. There were I, Assaf and Mehmed Atta. I asked him as a proper occasion had presented itself while talking. I did not ask him to enable me to give evidence if necessary. I am not a friend of Remzi. I know him personally but we don't talk to each other. I know cook Zia but I am not on friendly terms with him. My substantial job is breakfast selling. It is not true that such a conversation passed between me and Atta.

ReXXtion: NIL.

30 Adjourned to 6-6-1947, at 10. a.m.

(sd) A. Burhaneddin
Sheri Court

No. 30

EVIDENCE of Ahmed Seyfi (Defence Witness No. 12)

D.12) Ahmed Seyfi of Nicosia, sworn:

40 My name is Ahmed Seyfi. I am a Mukhtar of Omerieh quarter for the last 10 years. My father was Hafiz Lisani Eff. who was a Mukhtar of the quarter before 30 years. My father is now dead. It is 8—10 years since his death. A list of Moslem tax-payers of the Omerieh quarter from my father passed to me and I have it in my custody. This list was prepared in 1881 and it is in the handwriting of my father. I know it. I produce it — list is headed "Moslems of Omerieh quarter" and dated 1881. Put in marked A.S. (1)/6.6.1946. In this list there appears the name of

*In the
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sitting in
Nicosia
—
Defendant's
Evidence
(continued)*

No. 29
Evidence
of Abdullah
Dervish
5th June,
1946.
(continued)

No. 30
Evidence
of Ahmed
Seyfi
6th June,
1946

Exhibit
A.S. (1)

In the
Sheri
Court of
Nicosia –
Kyrenia
sitting in
Nicosia

Zuriye Hanim, daughter of Hussein Edip.

XXtion: Hafiz Lisani was not my father but he brought me up.

ReXXtion: NIL.

No. 31

EVIDENCE of Assaf Kiamil (Defence Witness No. 13)

Defendant's
Evidence
(continued)

D. 13) Assaf Kiamil of Nicosia, sworn:

No. 31
Evidence
of Assaf
Kiamil
6th June,
1946.

My name is Assaf Kiamil — an auctioneer. I remember the death of Ayshe Vehbi, the sister of Cadi Muhiddin. The Nicosia Sheri Court had her property sold. I was present at the auction. I attended on all days. On the second day's afternoon I went there again. When I went there Arif Eff. came; Halil Agha opened the door. When we got in Halil, Atta and Fetthi were in and with many other people they moved into the verandah. We kept near the door. Atta said: "Look what these children have done — they cut the trees into pieces". 10

My partner auctioneer Abdullah said to him: "Don't pay attention to the destruction made by the children. After all she (deceased) has another heir: according to a report by Remzi a certain Raji is shortly coming from Istanbul and that he is the principal heir." Mehmed Atta said: "Yes, there was such an heir but he is now dead, my son. I am the principal heir now". Thereupon Choronik Hassan said: "Come on we are going to sell the things". We went in. The articles were sold in the verandah in the ground storey. During the bidding up of the articles Fetthi removed some of them inside saying: "I am an heir". Fetthi is the son of Mehmed Atta and we said: "We are here to buy these articles; and you want to damage us." His father said to him: "Give it up my son, don't mix yourself with this affair." Fetthi said: "Why shouldn't I interfere". And as Mehmed Arif had asked money for the articles from him Atta said to him: "Come and I will give you money once we are heirs". I said, "You are not the heirs, Remzi is making every effort and Raji will come here for certain; he is the actual heir." When I spoke Mehmed Atta was present there and could hear it. Mehmed Atta then said: "This man is not in life; he is dead and I am the heir at present." Auctioneers Assim and Yussuf were there — Auctioneer Assim then remarked: "I met Raji at Beirut and know that he is living." 20 30

XXtion: Before going there on that day I had heard about Remzi's reports. Once I lived with Remzi in the same house for four years. We lived in Agiah Eff's house. I with my mother and Remzi with his mother we lived in the same house. We are not related with each other. Remzi was scavenger in the Municipality and I used to see him every day at Famagusta gate. I saw him (one day) flurried and asked him what was up and he said: "Our lady died; I am an heir and there is another one abroad and that is why I am in a hurry." I heard about this matter from Remzi. It was with Abdullah that I was going when I saw Remzi. Abdullah is my partner. I and Remzi lived together 22 years ago and ever since whenever 40

I see Remzi I talk to him. I was not curious when I saw Remzi flurrying. When my father died, my grandmother lived there (with Remzi) and we had to join our grandmother there. Remzi is not in my good graces as I once lived with him. I had mentioned before that I once lived with him in order to show that I know Remzi from before and that was the reason why I had asked him what was up. I had met Remzi in the street about one month before the second day of the auction referred to earlier. I had met Remzi later in the street again but did not have any conversation with him on this subject. I used to hear about this inheritance, which Remzi had told

10 me, in the cafes until the day of the auction. The talks in the cafes were to this effect: "Remzi will have a big inheritance; if the man from abroad came and undertook the expenses he would have a gain provided the properties are not already made vakf — but we know, they are vakf." Before going to the auction on that day I and Abdullah hadn't had any conversation between ourselves. I went to the auction in company with Abdullah and others and we arrived at the house, the door opened and the people walked in. I and Abdullah had remained near the door. Mehmed Arif also walked in as he was the man in charge of the sale. I and Abdullah went there to buy property. Although the man who would sell the property

20 and the people waiting as well got in, I did not go in to avoid crowding and we were waiting for the auctioneer to cry. At the conversation which took place there I, Abdullah and Atta Bey were present and a little distance from us there were other people as well who could hear us if we talked aloud. We and Atta we were talking in a low tone. I said to Atta: "There is another heir who will arrive shortly." Atta replied, "There was one my son but he is dead, and for the time being I am the heir." I said those words to Atta as a result of his complaint for the destruction of flowers. Abdullah also said to him: "Remzi says that the heir is coming from Istanbul — this inheritance is his — his name is Raji." Abdullah had spoken first.

30 I did not mention his name to be Raji. I mentioned the name Raji when I was in. My mentioning the name 'Raji' was based on the report of the people and Remzi's mentioning Raji's name. On the day Remzi was passing in a flurry he did not make any mention to me of the name 'Raji', but only of Istanbul. On the first day of sale and before going there Remzi said that he had cabled to Raji and that he would come to Cyprus. I had a second meeting with Remzi and had a talk about this inheritance apart from the first one. I heard it from Remzi's lips as he chatted in the coffee shop before but it was subsequent to my seeing him flurried. When the sale started there were many people about and whatever conversation or conflict

40 took place between them at the auction the people could hear it. It is not true that no mention of the name of Raji was made near the door inside between me, Abdullah and Atta. I used to hear that Remzi was a relation of Raji. I am an auctioneer for the last 10 years. I have no shop of mine: I do it going round. Before this I was a hawker going round again. I once gave somebody a slap at Beirut and as I had failed to pay the fine I went to prison for five days. This man had stolen my property.

ReXXtion: NIL

*In the
Sheri
Court of
Nicosia —
Kyrenia
sitting in
Nicosia*

*Defendant's
Evidence
(continued)*

No. 31
Evidence
of Assaf
Kiamil
(continued)

No. 32

EVIDENCE of Assim Hassan (Defence Witness No. 14)

In the
Sheri
Court of
Nicosia -
Kyrenia
sitting in
Nicosia

Defendant's
Evidence
(continued)

No. 32
Evidence
of Assim
Hassan
6th June,
1946.

D. 14) Assim Hassan of Nicosia, sworn:

My name is Assim Hussein. I am an auctioneer in Nicosia. I remember the death of Cadi Muhiddin's sister Ayshe. I was present at the sale of her estate which took place in her house. The Sheri Court Clerk in charge of the sale was Arif Eff., Arif Eff. is a Sheri Court Clerk. I was present at the auction on the second day. Something happened there — a discussion took place between Fetthi and Assaf with regard to bidding up certain articles and they exchanged hot words between themselves. Assaf said to Fetthi: "I heard from people outside that according to Remzi's allegation there is a certain Hussein Raji abroad who is the heir". Mehmed Atta was there in the verandah. Mehmed Atta said: "There was such an heir but he is now dead." I then said to Atta: "But I used to see this man at Beirut, he is still living and he is a policeman. I had seen him at Sorsouk Hotel." The man I referred to was Hussein Raji. There were many people when this conversation took place, about 50—100 — Dellah Yussuf was also present.

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XXtion:

I had an auctioneer's shop in partnership with my brother. I don't have any shop now. The purchases I make now I take home. Before going to the place of sale I used to hear outside in cafes and everywhere that a certain Hussein Raji is the heir. I remember Hussein Raji was in Cyprus and we were attending school together. Hafiz Lissani was our teacher; it was at the time of the Balkan War, that I had seen Raji at Sorsouk Hotel. I went to the sale on that day along with other auctioneers. The door was closed — it opened and we went in. The Clerk came and directed Halil to open the door and he did so. Halil opened the door from inside. I did not notice if the door was sealed. I don't know. I don't know if Arif came with Halil. When Halil opened the door we went in — we had been waiting there. All of us got in and walked to the verandah. When this exchange of hot words took place there were 50—60 people there who could hear it as well; perhaps they don't want to come to Court. Fetthi ~~came~~^{came} up for an article and Assaf got angry and a conflict took place. As Fetthi was taking inside anything ~~for~~^{for} Assaf said: "We are losing". I was not losing from the acts of Fetthi. Before this conflict took place I had bought a carpet and was sitting there expecting to buy something more if I could. On Fetthi and Assaf's exchanging hot words: Assaf said: "Don't be in a hurry, this inheritance does (not?) fall to you; there is another heir abroad named Hussein Raji". Thirty years ago it was customary to make public rejoicings at Muhiddin's house and I and Raji used to go to Muhiddin's house and he used to go in but I could not go in myself as I was poor and that is why I know that the alleged heir is the one I saw at Beirut. At the auction there was a talk about Hussein Raji.

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ReXXtion: NIL

No. 33

EVIDENCE of Yussuf Zia (Defence Witness No. 15)

D.15) Yussuf Zia, auctioneer of Nicosia:

My name is Yussuf Zia and I am an auctioneer in Nicosia. I remember the death of Cadi Muhiddin's sister. The estate of this lady was sold by the Sheri Court. I was also present at the sale. Something happened there; at about 3 o'clock in the afternoon we went to the house where the sale would take place, the door was not yet open and so we waited in front of the door. When the time was up Halil Agha and Mehmed Atta opened
 10 the door for us; they were inside and we outside. When the door opened we entered and went to the verandah waiting for the sale. The sale then started. A quarrel took place between Fetthi and Assaf. Fetthi said: "Why do you bid up; this is our property." Atta was a little distance away. Assaf replied: "Don't be in a hurry, there is an heir in Istanbul to whom Remzi has cabled and Raji is coming from Istanbul and he is the heir." Atta turned and said. "There was such an heir, but he is now dead." There was a big crowd there including auctioneer Assam. Assam said: "I saw him in Istanbul and he is still in Istanbul, and a Police Officer. I am wrong to say in Istanbul he was in Beirut".

20 ~~XX~~ ~~tion~~ All we auctioneers went to the door together. I, Abdullah, Assaf and Assam. On our way we were not talking about this inheritance. As there was a rumour going round, I had got hold of Remzi and asked him about it and so I knew about it before the sale. I don't know if it was on the first or second day of the auction. I had been to this sale also before this conflict. — this conflict did not take place on the first day of the sale. Fetthi used to interfere on the first day too. I don't know what damage Assaf would suffer in this sale. An article is bought if it is put on sale, otherwise it is not bought. We were in the verandah. Fetthi and another one and also Abdullah were inside. Fetthi did not want to let some of the
 30 articles to be exposed for sale and that is why Assaf quarrelled. I heard Assaf say, "This property does not belong to you. There is an heir in Istanbul, who is coming." Atta said: "There was such an heir, Raji, but that Raji is now dead." Upon this Assam remarked: "He was in the Police Service in Beirut, and he is now a Police Officer in Istanbul." I did not say anything. The people present could hear them. There were 50—60 people there. Auctioneer Assaf stores his purchases in my shop for his own account, and Abdullah does the same. Assaf and Abdullah are partners. Assam also sometimes brings articles there. I don't know why Raji having been informed of the conversation which took place at the sale sub-
 40 poenaed us. Assam and Raji came together and asked me and I said to him that Atta had used these words. The name of Raji was mentioned at the sale. Atta pronounced the word "Raji."

Re~~XX~~tion: NIL.

Court:- Adjourned to 4 p.m.

(sd) A. Burhaneddin.
 Sheri Court.

6-6-46.

*In the
 Sheri
 Court of
 Nicosia —
 Kyrenia
 sitting in
 Nicosia*

*Defendant's
 Evidence
 (continued)*

No. 33
 Evidence
 of Yussuf Zia
 6th June,
 1946

No. 34

EVIDENCE of Fatine Hussein (Defence Witness No. 16)

D.16) Fatine Hussein of Flassou, sworn:

My name is Fatine Hussein. I originally come from Linou. I now live at Flassou. Before going to Flassou and before getting married I lived in Nicosia. In Nicosia I stayed with my sister Ayshe Hanim. This Ayshe Hanim is my sister. Ayshe's husband was Ferid Eff., who was my brother-in-law. I went to my sister when I was eight years old. I married at the age of 24—25. I married Haji Ahmed Eff. It is 40 years since I settled in the village. The Hussein Raji referred to in this action is my sister's son, his father was Ahmed Ferid Eff., Ahmed Ferid's father was Fahreddin. I don't remember Fahreddin myself. I used to hear from Ahmed Ferid Eff. and Zuriye Hanim that Ahmed Ferid was Fahreddin's son. Zuriye Hanim was the mother of Ahmed Ferid. Zuriye Hanim's husband was Fahreddin Eff. I remember Zuriye Hanim in life — she lived in Kourou Chesme quarter. My sister Ayshe had four children by Ahmed Ferid. The eldest was Raji Bey, who is a party to this action, next comes Feride, Fahreddin and Sadiye. Ahmed Ferid's child was called Fahreddin as his grandfather was so called. From these four children Raji and Feride are surviving. When Sadiye and Fahreddin died their father was living. Fahreddin had six brothers and sisters: three brothers and three sisters — The brothers are: Fahreddin, Hji Nouri and Vehbi — these are full brothers. I don't remember Fahreddin myself. When I lived at Nicosia with my sister I sometimes went to Flassou. There I had my father Hussein Agha and my mother Hadije. Vehbi Eff's wife was Fatma Hanim. This Fatma Hanim was the daughter of Tahtakala Imam. This Fatma used to come to my sister Ayshe's house. I then lived there and used to see her. My sister Ayshe respected this Fatma Hanim, very much. Fatma was the wife of our uncle. Vehbi Eff. had children: Muhiddin Eff. and Ayshe Hanim. These lived in Yeni Jami quarter. I and my sister used to visit them. The small Feride and the small Hussein Raji used to go to Vehbi's house when I lived with my sister. Ayshe Hanim regarded the children as well. It is 37—38 years since the Raji referred to in the action left Cyprus. During this period I had no news from him. I used to live in the village throughout this period. I remained in the village for 40 years. I heard of Raji's whereabouts four years ago through his sister Feride. Feride wrote to her uncle about property. Feride's uncle wrote a letter to my brother Vassif; in her letter she said: "Thank God both of us are well." Then we learned for the first time that he was living. When Ayshe Hanim died I was in the village and I heard of it one month after. When I received the news of her death I came to Nicosia and walked towards Yeni Jami quarter and asked the neighbours if it was true that she was dead; the neighbours said: "Yes". I went to Ayshe's door and saw it sealed officially. As I was unwell I returned to my village.

XXtion :

My brother-in-law Ferid died 40 years ago and over. Raji left Cyprus

In the
Sheri
Court of
Nicosia —
Kyrenia
sitting in
Nicosia

Defendant's
Evidence
(continued)

No. 34
Evidence
of Fatine
Hussein
6th June,
1946.

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after his father's death; I don't know how long after. My first husband was Haji Ahmed of Nicosia and my last husband Hoja Kiamil of Flassou. My first husband was a cartdriver and we had no children. Raji Eff. had left for Beirut and I did not hear from him after that. Raji did not occasionally come to Cyprus, nor did we hear from people travelling where he was and we wept over it day and night. If two witnesses say that they saw him in Beirut they are lying — Raji went to Turkey. As I was not receiving any letter from Raji I did not know where he was. Vehbi's father was Osman Eff., whom I don't remember. Nor do I remember Vehbi. I don't know what was the name of Vehbi's mother. I don't know Hji Nouri Eff. I don't know Vehbi's sisters. I hear about them. Their names are Ayshe Mulla Sherif Mulla and Havva Mulla. I did not see any of these. I used to hear from Zuriye and Ahmed Ferid that Vehbi, Fahreddin and Haji Nouri were full brothers. They said that they were three brothers born of same parents. I don't know Fahreddin. I am 65 years old. Fahreddin's father was not Haji Ahmed. Ferid Eff. has no relations named Hji Ahmed. If Hatije says that Fahreddin's father was Hji Ahmed, my suggestion is that she may not have heard well as she is hard to hear and worried. I say on my oath that I don't remember any relation named Hji Ahmed beyond the degree of Ferid's father; and I say again basing myself on what I heard from Ferid that Fahreddin, Vehbi and Hji Nouri were brothers. I have no personal knowledge of them. I am an aunt of Raji. I am telling the truth. The Court knows if Raji will win. Words don't count. By Ferid I mean Raji's father and by Zuriye I mean Raji's mother.

ReXXtion: NIL.

To Court:

Raji's father was Ahmed Ferid whose father was Fahreddin and the latter's father was Osman Eff.

No. 35

EVIDENCE of Remzi Yussuf (Defence Witness No. 17)

30 **D.17) Remzi Yussuf of Nicosia, sworn:**

40 My name is Remzi Yussuf. I am from Nicosia. My father is Mulla Yusuf and my mother Mounteha Hanim. Mounteha's father was Fahreddin. Fahreddin's wife was Zuriye Hanim. Zuriye was my grandmother and Fahreddin Eff. my grandfather. I don't remember my grandfather Fahreddin. I heard from my grandmother Zuriye and from my aunts Nessibe and Aliye that my grandfather was Fahreddin. I remember my grandmother Zuriye — she lived first in Omerieh quarter and later in Arab Ahmed quarter. I remember the death of my grandmother Zuriye and the house she died in — she died in the house of Irfan Bey near Buyuk Hamam — The Hussein Raji in this action is my cousin i.e. uncle's (maternal) son. From Vehbi's sisters I remember Havva Mulla. The name of the other sister of Havva Mulla was Zehra Mulla whom I was not visiting. Our quarters were not near each other. My mother used to take me to Havva Mulla who used to teach me. I went to Haji Nouri with my grandmother and aunt; he gave articles

*In the
Sheri
Court of
Nicosia –
Kyrenia
sitting in
Nicosia*

*Defendant's
Evidence
(continued)*

*No. 34
Evidence
of Fatime
Hussein
(continued)*

*No. 35
Evidence
of Remzi
Yussuf
6th June,
1946.*

*In the
Sheri
Court of
Nicosia -
Kyrenia
sitting in
Nicosia*
—
*Defendant's
Evidence
(continued)*

No. 35
Evidence
of Remzi
Yussuf
6th June,
1946.
(continued)

to my grandmother who offered to pay for them but Haji Nouri refused to take money. I remember Haji Nouri's death. I attended his funeral. His body was buried in the old cemetery at Kyrenia Gate. The deceased Ahmed Muhiddin and Ayshe Hanım were the children of the brother of my mother's father. My mother used to visit them but not I. Whenever my mother visited him (Muhiddin?) he used to pay money to her and supplied her with butter, rice and sugar. This contribution he made was because of her relationship with him. I used to go to Muhiddin's house on the occasion of Bairams, kissed his hand and he gave me money. When Ahmed Muhiddin died I went with my mother to the Mufti. At sunset on the day following his death we went and found the Mufti at his house. The Mufti was Hakki Eff., We went to him to seek for the right of my mother. When we went the Mufti came to the door; we consulted him and received a reply from him with regard to this inheritance. The following day we went to a Greek advocate who instructed his clerk who came and saw the Mufti and returning to the office gave us a reply.

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When Ayshe died I saw the Mufti again — my mother was then dead; it is over 3 years since my mother's death. I again went to the Mufti's house and this time he admitted me to his house. I made a statement to him and he gave me a reply. The day following Ayshe's death I went to the Mufti and then to advocate Essad. Before going to the advocate I had made a petition and taken it to Burhan Bey in the Sheri Court and then had gone to Essad Bey and then I wired to Istanbul. The reply from Istanbul was not received early. Then I went to the Turkish Consulate. Then a reply to my cable came from Istanbul.

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The telegram said that Feride and Hussein were in life. After this reply was received, first Raji, the one referred to in this action, came to Cyprus and then his sister Feride.

XXtion: I was born two years after the British occupation of Cyprus and I am 65—66 years old. I remember Vehbi. I was five to six years old when he passed away. We then lived in the Omerieh quarter. It is nearly 40 years since my maternal uncle Ferid's death — it may be one or two years less than 40 years but not as much as four years. Raji left Cyprus for abroad one-and-a-half years after his father's death; he had gone to Beirut and became a policeman there. Raji remained in Beirut until when the Ottoman Empire withdrew therefrom and then he went to Istanbul. During this period he did not come at all to Cyprus. From Vehbi's sisters I remember Havva Mulla — I used to go to her school. I did not see the other sisters at all and don't know them. The eldest of the sisters lived in Ahmed Muhiddin's house; but I don't know where the house — the one which was his own, was situate. I don't know what was the name of the sister who lived with Ahmed Muhiddin. I don't know where she stayed before moving to Muhiddin's house. My mother used to take me to Havva Mulla and said to her "aunt, teach Remzi" as I went there for study. I don't know the wife of Haji Nouri; I did not go to his house; he was married. I do not know who his wife was — I don't know how many times Haji Nouri had married. Haji Nouri

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had no issue. When I lived in Omerieh quarter Haji Nouri's shop was next to the shop of Dedezade Assim's and when I grew up he had removed in to a shop situate in the street leading to Arasta Street. It was about 60 years ago that Haji Nouri had a shop is Bazirganlar Street. Haji Nouri used to sell all sorts of things. The name of Vehbi's wife was Fatma Hanim, who died 40—45 years ago. Ahmed Muhiddin died 9 years ago. When Ahmed Muhidin died Raji was a Police Officer in Istanbul. I did not write to Raji about Ahmed Muhiddin's death; because I had consulted the Mufti and this was his advice. I had no communication with Raji before either. I wrote to him but received no reply as I did not know his address. I used to hear about him from people coming from abroad. I knew Raji was at Skoutari — it is now two years and one or two months since my mother's death. My mother before her death lived in the Kyrenia Gate proper and she stayed there for a year. She lived there because she shouted and no one would give her accommodation. She used to beg from people who knew her. Ahmed Muhiddin had many small and big houses. My mother survived Muhiddin. We stayed at the place called "Kommarjilar" inn for 25 years; then we removed to a house where we stayed two years. As my mother was in the habit of shouting, people did not give us accommodation. As we were feeling comfortable at the inn we did not ask for a house from Muhiddin or Ayshe. My mother at the time she lived in the Kyrenia Gate did not go and ask for house accommodation because she did not want it. I used to visit Muhiddin Eff. on Bairams and on those occasions he had his doors open for everybody. I used to hear from my mother, from Zuriye Hanim and from my aunt and uncle that Vehbi, Haji Nouri and Fahreddin were brothers. Vehbi's father was Osman Eff; his mother was Fatma Hanim. I used to hear these from them as well. Haji Nouri also used to tell these to my grandmother when she went to his shop. I don't know who was Haji Ahmed. The signature on Exh. M.A. (2) is not in my handwriting — it was written at my instance. I don't know how to write. Before handing in this Exhibit to the Sheri Court I had brought in an unsigned document which I then took to Essad Bey. That document is not with me now. The relatives given in that document do not differ from these given in this Exhibit. One week after Ayshe Hanim's death I sent a cable to Dr. Hafiz Jemal and one or two months after I received a telegram saying "I and Feride are in life" — and in the meantime I did not receive any letter from Dr. Hafiz Jemal. I don't know. I did not see any letter.

40 **ReXXtion :**

The first time I visited the Mufti he said: "Cadi Muhiddin Eff. dedicated his property as Vakf and on his death all his property will pass to the Evkaf" and this was the reason why I did not wire. The first document I brought in was returned to me by the Sheri Judge and I took it to my advocate. The Sheri Judge saw it and returned it to me. I don't know where it is now.

Court: Adjourned to 3.6.46 at 4 p.m. (Sd) A. BURHANEDDIN.
6.6.46 Sheri Judge.

*In the
Sheri
Court of
Nicosia
Kyrenia
sitting
in Nicosia
—
Defendant's
Evidence.
(continued)*

*No. 35
Evidence
of Remzi
Yussuf
(continued)*

*In the
Sheri
Court of
Nicosia
Kyrenia
sitting
in Nicosia*

*Defendant's
Evidence.
(continued)*

Continuation of Evidence for the Defence.

No. 36

Mehmed Assim Dedezade produces passport.

Fuad Eff. Witness Dedezade Mehmed Assim in the course of his evidence was asked about his passport and he had promised the Court to produce it, and as he has now traced it may he produce it.

Court allows Production

Mehmed Assim Dedezade, Nicosia, sworn :

My name is Mehmed Assim Dedezade. On the previous occasion in the course of my evidence Fadil Eff. had asked me whether I could produce my passport and I said I would produce it if I could find it. I found my passport. I produce it to the Court.

Passport in the name of Mehmed Assim Dedezade produced No. A5128 issued by Government of Cyprus Marked M.A. (1) / 7.6.46

XXtion :

The first time I arrived in Istanbul was on 5.10.1925 and the last time I received a return Visa to Cyprus via Mersina was on 7.5.1929; and during this period 1925-1929, I don't remember how many trips I made to Istanbul whether I made three, four or five trips I can't remember. On one of these trips, in 1925, I saw Muhiddin Eff. this was on my first visit to Istanbul with this passport. I travelled to Istanbul fifty times. It was 1-2 days after my arrival in Istanbul with this passport that I had seen him. Muhiddin Eff. was in Istanbul when I arrived on 5.10.1925.

Re XX tion : NIL.

No. 36
Mehmed
Assim
Dedezade
produces
passport.
7th June,
1946.

Exhibit
M.A. 1.

No. 37
Evidence
of Hussein
Raji
7th June,
1946.

No. 37

EVIDENCE of Hussein Raji ((Defence Witness No. 18)

D.18) Hussein Raji of Nicosia, sworn :

My name is Hussein Raji. I was born in Nicosia, Cyprus. I am a plaintiff in Action No.41/45 and a defendant in 14/45. I was born in the Arab Ahmed quarter. My father is Ahmed Ferid and my grandfather was the deceased Fahreddin. My great-grandfather i.e. Fahreddin's father, was Osman. I do not remember myself my grandfather Fahreddin and my great - grandfather Osman. I used to hear from my father and my aunts (paternal) Nessibe and Mounteha that my grandfather Fahreddin and my great - grandfather was Osman. I lived in various quarters of Nicosia together with my parents and aunts (paternal). My mother was Ayshe. The last place I lived was Morphou and then I came to Nicosia and lived in Asma Alti. My father was a railway station officer at Morphou and I stayed there. My father was a Government official before

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his death — he worked in the Railway at Morphou. Prior to his service in the Railway Department my father worked as Tithe Officer in charge of locust destruction campaign and I heard from him that his first public service started in Larnaca. What I know is that as Government official he worked in the Railway Department, in the Tithe collection office, in the Locust Destruction campaign and as Village Roads Foreman. I stayed at Morphou for 2½—3 years. When I returned from Morphou I lived in Asma Alti and there he fell ill and died. The house we lived in was turned to a building site. My mother died first. I was six or seven

10 years old when my mother died and taking into consideration that I was 17—18 years when my father died the difference between the two periods becomes 10 years. I remember my father's mother; it was Zuriye Hanim. My paternal grandmother lived where the new building now built by Evkaf office stands. My paternal grandmother died before the lapse of one year from my mother's death. The date of my father's death was 1909 towards the middle of that year. We were four brothers — the eldest of us is I. Next to me comes Feride who is living. Then comes Fahreddin and then Sadiye. Feride is in life. Fahreddin died in Nicosia when he was a child. Sadiye died at Linou when she also was a child. One of

20 my brothers was named Fahreddin on account of my father's father name being Fahreddin. I used to hear that including my grandfather Fahreddin there were three brothers and three sisters. I used to hear that these were full brothers and sisters born from the same parents. Their names are Haji Nouri Eff., Vehbi Eff., Sheriff Mulla, Ayshe Mulla and Havva Mulla and my grandfather Fahreddin. I used to hear that the eldest of these was my grandfather, next came Haji Nouri and the youngest was Vehbi. The eldest of sisters was Sherif Mulla, next came Ayshe Mulla and next Havva Mulla.

My relation with the deceased Ahmed Muhiddin and his sister

30 Ayshe Hanim is: These were the children of Fahreddin who was my father's father. Vehbi Eff. and my father were the uncles of Ahmed Ferid. I do not remember Vehbi myself. I was about 17—18 years old when I left Cyprus. The father of my father's mother Zuriye was Hussein Edip Kioustahi. I used to hear that this gentleman was a delegate of Evkaf and that he had functioned as such until one year after the British occupation of Cyprus. The first wife of Hussein Edip Kioustahi was Zehra. After Zehra's death he married Kirlizade Havva Hanim and during his marriage with Havva Hanim he lived in her house situate near St. Sophia at Kemer Alti. Hussein Edip died in

40 his daughter Zuriye's house in Omeriye quarter the house being the property of her daughter Zuriye. The reason for his death in the house of Hussein Edip's daughter Zuriye is because he was not getting on well with his wife; but as at the time of his death Havva Kirlizade was under his nikhah she availed herself of his inheritance. I used to hear that this Havva Hanim was a cousin of Haji Niyazi Eff. who was father of Fadil Niyazi Korkut. I went from Cyprus direct to Beirut. When I left Cyprus after my father's death, my sister Feride was with me. One month after my arrival at Beirut I enlisted in the Police Force. In 1942 I was

*In the
Sheri
Court of
Nicosia -
Kyrenia
sitting
in Nicosia*

*Defendant's
Evidence.
(continued)*

*No. 37
Evidence
of Hussein
Raji
(continued)*

*In the
Sheri
Court of
Nicosia -
Kyrenia
sitting
in Nicosia*
—
*Defendant's
Evidence.
(continued)*

No. 37
Evidence
of Hussein
Raji
(continued)

put on pension under the pensions law and at the time I held the office of Chief Officer of Police. Besides being a pensioner of the Turkish Government I also deal in trade now. I met auctioneer Assim who gave evidence in this case, at Sorsouk Hotel at Beirut. My meeting Assim at Beirut was in about 1327 (Arabic); but I don't remember well; this date is an approximate one. I served in several parts of Turkey and at the end of World War No. 1. I returned to Istanbul in 1919 after having been a prisoner of war for four years. I served again in Istanbul as an Assistant Officer of Police. I came across Dedezade Assim Eff. at a cafe on the shore called Haji Davoud. My compatriots frequented that place and I used to go there — this was about eighteen months after I had become a Policeman. I knew Dedezade Assim when I was in Cyprus he used to be a companion of my father. Dedezade Assim, Auctioneer Hassan cafeji Hashim used to gather at the shop of Baklavaji Rifat and amuse themselves and I used to go and see them. I often went and sat at Dede's shop in the other street after the school hours and when my father was absent Dede used to protect me. I met Mehmed Assim Dedezade also in Istanbul. This meeting coincides with the time when I was appointed in the Police Station at Galata i.e. the end of 1925 and beginning of 1926. I cannot say definitely. I met him at the Club of Kiridli Niyazi Eff. in the Riktim street. This club was furnished with velvet-covered sofas and looking glasses.

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I was sitting there with Cadi Ahmed Muhiddin. As Mehmed passed by Ahmed Muhiddin called out to him "Dedezade, Dedezade" and he came in and Ahmed Muhiddin pointed me out to him and said: "Are you acquainted"; and Mehmed Assim said; "I know him, he is your uncle's (paternal) son", Ahmed said: "Yes, he is Raji, my heir". Assim Bey had a tea and saying that he had business left the place after 10 minutes' stay. I was in uniform on that day. I wore the uniform of an Asst. Police Officer. 5—6 days before meeting Ahmed Muhiddin Eff at Galata I had met him at a club at Chamberli Tash; and there we had an appointment to meet at Galata after a week.

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I did not write to Cyprus any letter during my stay in Turkey and did not inform them of my life. I did not even reply to my uncle who had written to me about my properties. I did not receive any information about Cadi Muhiddin's death. I first heard of Ayshe Hanim's death from Dr. Hafiz Jemal and then from the office of the Director of Internal Security where the news had come from the Turkish Consulate in Cyprus. As soon as I was informed I came to Cyprus and have taken the necessary measures. I came here on 21—22nd July, 1945. Before coming to Cyprus I cabled to the Sheri Court and after my arrival I brought the action No. 41/45. I have an aunt (maternal) in Cyprus, who gave evidence in Court yesterday.

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XXtion :

I am 54 years old. I am sure I left Cyprus in the middle of 1909, one or two months after my father's death. According to the Commissioner's record my father died on 22nd August, 1910 — the date I gave was Arabic. I joined the Police Force in October, 1326 and my formal

registration took place on 22nd November, 1326. If the Commissioner's record gives the date of my father's death as 22nd August, 1910 — it must be so. I don't know when the information was recorded in the office of the Commissioner. Mehmed Edip is my uncle who died without issue. From amongst my aunts Mounteha was mad but I remember her in her youth to be of sound mind. My father did not marry another wife after my mother's death. I am married. My wife's name is Vessime, a daughter of advocate Salih Eff. I have a child. This Vessime, I say on my oath, was not a nikiahed wife of my father before. My father used to live in a house opposite the old Turkish Lycee and when he lived there this Vessime was not a nikiahed wife of my father. Before I married Vessime, my father, I and Vessime were not living in the house opposite Turkish Lycee. Vessime was not present: she used to live with her father.

Fuad Eff.: I object to such questions as these being put.

My father's illness to death is not due to my acquaintance with Vessime. I knew Havva Mulla personally as I was attending her school. I don't know Ayshe Mulla. I knew Haji Nouri Eff.

My father's father was Fahreddin, and he is not the one who owned the gardens at Lefka now called "Fahreddin Gardens" and the reason why these gardens were so called was not because they originally belonged to my grandfather. I don't know if my grand grandfather Edip was a Mudir (Sheriff) at Lefka. It is not true that my grandfather Fahreddin married my grandmother Zuriye when my grand grandfather Hussein Edip was a Sheriff of the Lefka Nahieh—nor do I admit that my grandfather had ever been a Mudir (sheriff). It is not true that my grandfather Fahreddin originally came from Lefka and that he, after selling his properties at Lefka, moved to Nicosia. It is not true that the house at Omerieh quarter which I knew belonged to Zuriye, had been registered by Hussein Edip in the name of Fahreddin and that from Fahreddin it passed to Zuriye. I don't know if the house I know as belonging to my aunts, had originally passed to them from Hussein Edip. I don't remember if my father's father Fahreddin had a surname — he may have had one. I do not know if Haji Nouri and Vehbi who were my grandfather's brothers had any nickname. I do not know from among the people who called Havva Mulla as Havva Mulla as I was too small. I don't know if Vehbi's and Haji Nouri's surname was Injizade, I hear it now for the first time. I say Hii Nouri, Vehbi and Fahreddin were brothers basing myself on the information I had from my aunts. Ahmed Muhiddin used to give his speeches written to my father and the latter had them read by me. I used to hear from my father that their father was Osman. I do not know who Osman Eff.'s father was. It is not after the institution of the present action that I learned Vehbi's and Haji Nouri's father was Osman; I heard it from my father. I do not know and I do not remember in which house Vehbi's father Osman lived. The father of my grandfather Fahreddin is not Haji Ahmed and I have not an ancestor named Hji Ahmed. After my arrival at Istanbul I served in Istanbul up to 1933. Then on promotion I went to Trebizond and stayed there until 1937. In 1937 I was instructed to reorganise the Police Force in the Hatay and after the annexation of this

*In the
Sheri
Court of
Nicosia —
Kyrenia
sitting in
Nicosia*

*Defendant's
Evidence
(continued)*

No. 37
Evidence
of Hussein
Raji
(continued)

*In the
Sheri
Court of
Nicosia
Kyrenia
sitting
in Nicosia*

*Defendant's
Evidence.
(continued)*

*No. 37
Evidence
of Hussein
Raji
(continued)*

country I returned to Trebizond where I stayed until 1939 when I was transferred on promotion to the Province of Van as a Chief Police officer. There after acting as Director of Public Security for three years I was pensioned off. After my retirement I settled in Istanbul where I lived since 1942 until I came to Cyprus. I was not receiving information from people who travelled to Istanbul after I had left Cyprus. When leaving Cyprus I knew that Cadi Muhiddin was a relation of mine as alleged by me; and I knew he was rich and that he had a house. My aunts used to say "Failing Muhiddin this house would be ours" — I did not make inquiries at all about Ahmed Muhiddin's life although I knew I would be his heir. It was on the information of Ayshe's death that I learned Ahmed Muhiddin was dead. When I first brought this action my advocate knows if the claim was only for the inheritance of Ayshe and again my advocate knows if a correction in the name was made by adding Ahmed Muhiddin's name. I was at Konia on business and on my return (to Istanbul) I first heard from Hafiz Jemal of her death.

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It is not true that on hearing from Dr. Jemal I did not take any steps until I heard from the Turkish Consulate. The telegram sent to Sheri Court, Nicosia, is dated 20th June, 1945. Ayshe Hanım's death occurred on 8th April, 1945.

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I don't know the date of Ayshe Mulla's death. I don't remember Hji Nouri's death. I was then a small boy of eleven or twelve years old. My father survived Hji Nouri. My father used to say that Haji Nouri had died and left him a small inheritance. I do not know what he had inherited. If you say that on Haji Nouri's death Ahmed Muhiddin had his estate sold I say that my father used to say he had inherited from Haji Nouri. Ayshe may have died after I had left Cyprus. I did not see Ayshe Mulla and her estate. My aunt Mounteha was not in misery when I was in Cyprus. Her son used to look after her. When I left Cyprus Remzi used to earn his living: he sold icecream. I don't know what life they led after that. I heard from Remzi's evidence that Mounteha was leading a miserable life; I don't know why Ahmed Muhiddin and Ayshe did not help her.

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Fuad Eff.: I object to this question.

Dede I referred to in my evidence is not a relation of ours. I learned from my family that my grandfather Fahreddin towards the close of his life left his family and went to Istanbul and died there. It is not true that when my grandmother Zuriye was left a widow and my father an orphan, the man so called Dervish Ali was rendering us pecuniary support; but he used to render services to us. I understand that my father was not an orphan at the time. My appointment in the Police at Galata was in the end of 1925 or beginning of 1926. I don't remember the month. I don't remember what month it was when Ahmed Muhiddin, I and Mehmed Assim met at Kiridlilis club. I saw Muhiddin Eff. twice, once at Chamberli Tash and on another occasion at Galata. I don't remember how long Ahmed Muhiddin had stayed in Istanbul. This was my first and last meeting with Muhiddin after my departure from Cyprus. Ahmed Muhiddin had, come to Istanbul accompanied by his sister. I don't know

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him come in company with others. It is not true that Muhiddin, I and Mehmed Assim did not meet and that what I stated before to have passed between us did not pass. I don't know if I have friends who wish me to win this case. It is not true that Dedezade Galib wishes me to win it and that he has done his best and found witnesses for me. Pertev, who is a son-in-law of Mehmed Assim, was my companion at Skutari and we used to meet each other. I also used to meet Fadil Eff. They lived in the same place. Pertev may wish me win this case. I know that Mehmed Atta is the son of the brother of Ahmed Muhiddin's mother. I don't remember the name of Mehmed Atta's father; my aunt used to tell me, only, that he was a relation of ours.

ReXXtion : I do not know personally if my grandfather Fahreddin had gardens at Lefka I stayed at Konia for about 2 months. Two days after my return from Konia to Istanbul I saw Dr. Hafiz Jemal. On the day I received the information I requested Hafiz Jemal to reply to the cable and I at once wrote a petition to the Ministry of Foreign Affairs and one day after the Direction of Police called and gave me a message. I sent a telegram to the Cyprus Sheri Court. I heard that some of my relations used to help Zuriye who was left a widow after my grandfather Fahreddin's death.

Court: Adjourned to 21st June, 1946, 10 a.m.

(Sd) A. BURHANEDDIN.
Sheri Judge.

7.6.1946

No. 38

EVIDENCE of Muzeyyen Mustafa (Defence Witness No. 19)

D19) Muzeyyen Mustafa of Nicosia, sworn :

My name is Muzeyyen Mustafa. I am 75 years old. I am living opposite the Municipal market in Nicosia. I was six years old when the English came to Cyprus. My mother's name is Zehra and she comes from Peristeronopighi. My father's name is Mustafa; he was an Imam at Vitsada. My father's mother was Kirlizade Havva Kadin. This Havva was my father's mother and her husband was Hussein Edip Kioustahi and he was in the Evkaf office. I remember my grandmother Havva and saw her live with Hussein Edip Koustahi. Their residence was in St. Sophia quarter. Hussein Edip died in his daughter Zuriye's house. He was on bad terms with his wife but they were reconciled and my grandmother was by his side when he died. Zuriye was Hussein Edip's daughter. I don't know Zuriye's husband. I do not remember him; but I know that Zuriye's father had taken her husband to Istanbul where he fell ill and died. Kioustahi returned from Istanbul and I saw his daughter, grandchildren and his wife Zuriye were weeping. I was married when my grandmother Havva died and had a child. I was 30—35 years old. My son Mustafa Shevki was about ten years old when my grandmother died. Mustafa Shevki is living.

Hussein Edip died after his return from Istanbul; he died about two or three years after. I was about eight or nine years old when Zuriye and her children cried after Kioustahi's return from Istanbul. I

*In the
Sheri
Court of
Nicosia -
Kyrenia
sitting in
Nicosia*

*Defendant's
Evidence
(continued)*

No. 37
Evidence
of Hussein
Raji
(continued)

No. 38
Evidence
of Muzeyyen
Mustafa
21st June,
1946.

*In the
Sheri
Court of
Nicosia -
Kyrenia
sitting
in Nicosia*

*Defendants's
Evidence.
(continued)*

No. 38
Evidence
of Muzeyyen
Mustafa
21st June,
1946.
(continued)

used to go together with my grandmother to Zuriye's house and they used to come to my grandmother's house. I was married into the house of my grandmother Havva Kadin in the St. Sophia quarter. My husband was butcher Kiamil. We lived with my grandmother for eleven years; and after eleven years we left as my grandmother did not want us to stay and we moved into our present house bought by my husband near the Municipal Market. My grandmother Havva was the second wife of Hussein Edip. I don't know if Hussein Edip had a wife named Saime. Saime was a neighbour, and I with my grandmother used to go to Saime's house — I know her personally; she was Zuriye's neighbour. Had Saime been a wife of Hussein Edip my grandmother would not have gone to her house. I know Hussein Raji in this action. I also knew his father Ahmed Ferid. Ahmed Ferid's father died in Istanbul. Zuriye was Ahmed Ferid's mother. Ahmed Ferid used to stay with his mother. Zuriye had daughters: Aliye Bessibe and Mounteha — I also knew these personally. I knew Cadi Muhiddin's sister Ayshe. This Ayshe is related to Raji and Mounteha; they are second cousins — Zuriye's husband and Ayshe Hanim's father Vehbi were brother and sister — full brother and sister; I also used to hear this from Zuriye. Saime at the time I knew her, was an old lame woman. I don't know who was Zuriye's mother. Zuriye had a house at Omeriye and her neighbourhood with Saime was at Omeriye. Hussein Edip had a house at Yeni Jami quarter wherein the Englishmen now weave clothing. Hussein Edip had bought it. This house they sold but I don't know whether they sold it when he still lived or after his death.

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XXtion:

I don't know what was Kioustahi's occupation before becoming a delegate of Evkaf. I hear that he was a Mudir at Lefka before. I don't know who was the husband of Zuriye's neighbour Saime nor do I know to which family she belonged. Kioustahi married my grandmother after his first wife's death. I don't know his first wife's name. I used to see the neighbour Saime before Kioustahi's death and after he (Kioustahi) had married my grandmother. If Fadil Eff. suggests that the name of Kioustahi's first wife was Saime I don't know. My grandmother married Kioustahi before the British occupation of Cyprus, but I don't know approximately how many years before they married. When I came I found my grandmother married. Kioustahi lived for another 3-5 years after I had come. Zuriye had another son married, Mehmed Edip but he died. The house of Zuriye at Omeriye I spoke of before was an inheritance to her from Hussein Edip. I never saw Zuriye's husband and I don't know him but I knew his name which my memory now fails me. I do not know if Zuriye's husband is from Lefka. I used to hear that Zuriye's husband had property at Lefka; I don't know if he bought it afterwards. Ahmed Ferid is older than I and Mehmed also is older than I. Ahmed Ferid is five to six years older than I. The girls are also older than I. I don't know if the girls were younger than the boys. The smallest of them was Mehmed, I think. After Kioustahi's death my grandmother and I, as relatives,

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continued our relations with the family of Zuriye. I used to hear from grandmother Havva and everybody that Zuriye's husband was Vehbi's brother. I never asked how they were related to each other I did not ask Havva Mulla how they were brothers. I was then eight to nine years old and how could I ask? Sheriff Mulla, Havva Mulla, Ayshe Mulla were all sisters. I don't know who the father of Vehbi Eff. was — When I saw him he was old. Nor do I know the name of Zuriye's husband. I used to hear that these people i.e. Zuriye's husband and Vehbi were brothers not after the institution of this case but even before. After
 10 the institution of this action and the arrival of Raji, Fadil Eff. came to my house. I did not tell you I did not know who Zuriye's husband was; I said: "I do not know that man" — I did not hear him say to me: "Tell me to which family Zuriye's husband belongs" and that I said: "I don't know; I did not hear". I was not asked (by Fadil Eff.) the question: "If you don't know personally tell me from your knowledge obtained from Zuriye who her husband was" and I did not reply: "I have no knowledge of this as well" — I don't remember such a question being put to me. Fadil Eff. told me he was on the side of Gioulshen Hanim and I said to him I was in favour of Raji. To his suggestion that
 20 I don't know anything about Zuriye's husband and that I have come to give evidence being a relation only, I say I have stated what I know only. What I have said I also knew from before. I did not have a meeting with Raji. The family of cook Zia did not see me on behalf of Raji after the action was instituted. When Fadil came to me I did not tell him that the family of cook Zia gave a different version of this relationship. Raji's mother was Ayshe Hanim, who was a wife of Ahmed Ferid. I don't know who his second wife was. I did not mix myself with them after that. The Kioustahi family used still to come to my house until he died and his daughter left this country, but I did not go
 30 to their home. Zuriye used to come to me until this and also her daughters Nessibe and Aliye; but I could not go to them; my husband did not allow me to go out. I did not receive a summons to come to Court to-day. My son sent me. Raji is not related to me. Kioustahi was my step grandfather.

ReXXtion: NIL

No. 39

EVIDENCE of Dervish Hji. Hussein (Defence Witness No. 20)

D20) Dervish Hji Hussein, Nicosna, sworn:

40 My name is Dervish Hji Hussein. I am 77-78 years old. I was living in the Omeriye quarter, but that quarter has now become Ay. Savva and the street Tricoupis street. I am an Aza of that quarter. I remember a certain old woman named Zuriye living there. I don't remember her father and did not hear whose daughter she was. Zuriye lived in Omeriye quarter. I knew a certain Saime in Omeriye quarter. Saime's house was next to Zuriye's adjoining each other. They were neighbours. This Saime was Murid Eff's mother. I don't remember and don't know Saime's husband — Murid Eff's son is Zia and he is living

*In the
 Sheri
 Court of
 Nicosia
 Kyrenia
 sitting
 in Nicosia*

*Defendant's
 Evidence.
 (continued)*

No. 38
 Evidence
 of Muzeyyen
 Mustafa
 (continued)

No. 39
 Evidence
 of Dervish
 Hji Hussein
 21st June,
 1946.

— He was a government official and now a pensioner. He has a farm near Psomolophou. Besides this Saime there was not any other lame Saime in Omeriye quarter. This lame Saime had no relationship with Zuriye — they were neighbours. When I was a child I used to go with my mother to Zuriye's house. Zuriye had daughters: The eldest was called Bessime, (the others) were Bessime, Aliye and Mounteha — I know Bessime to be a widow. Aliye had been married off to Famagusta. Mounteha married in their house and had a son named Yussuf. Remzi's father was Yussuf. Remzi has not got any other brother or sister, I don't know. I don't know if Mounteha had any other child. I only know Remzi. I see this Raji since his arrival from Istanbul. I remember and know Raji's father — his name was Ahmed Ferid. Ahmed Ferid had a small brother named Ferid. Ahmed Ferid was big and was a Tithe Officer. He was older than I. Mehmed Edip was also older than I and worked as shoemaker in Fazli's shop. I know Cadi Muhiddin. W may have been of the same age or perhaps he was one or two years older or younger than I. I and Cadi Muhiddin did not usually meet in Yeni Jami quarter. Cadi Muhiddin used to come with his mother to Zuriye's house. I used to meet Ahmed Muhiddin, Ahmed Ferid and Mehmed Edip in Omeriye quarter and used to play together. While playing Cadi Muhiddin was not telling anything for Mehmed Edip. Mehmed Edip said referring to Muhiddin "he is my uncle's (paternal) son". Cadi Muhiddin's father was Vehbi Eff. I do not remember Vehbi's father. I don't know him. I remember Zuriye as a widow.

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XX tion:

In Ay. Savva quarter there are eight or ten Turkish houses. The Saime I knew in Omeriye quarter was the mother of Murid who was the father of Zia. I do not remember Zuriye's mother, nor do I know her name. I do not know Zuriye's husband and his name. I do not remember him. Ahmed Ferid and Mehmed Edip were older than I. Ahmed Ferid was not playing with us. We played with Mehmed Edip, and Ahmed Ferid and Mehmed Edip used to control us. Ahmed Ferid was a Tithe Officer when I knew him. Mehmed Ferid was a shoemaker's apprentice in Fazli's shop. On Fridays we used to play as they were free. At that time I was seven or eight years old. I do not know how Cadi Muhiddin and Mehmed Edip were related. I heard from Mehmed Edip saying to Hafiz Dervish with reference to Muhiddin that he was his uncle's (paternal) son and a cousin. This was about 70-71 years ago and since then I remember these words as a child does not forget but a grown-up does.

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Re XX tion:

Mehmed Edip, I, Mahmoud, Cadi Muhidin and Sami used to play together. Mehmed Edip one day said to Cadi Muhiddin Eff.: "Why did not you come to play" Hafiz Dervish asked "In what way you are cousins" and Mehmed Edip replied in the presence of Muhiddin, "he is my uncle's (paternal) son — my cousin".

To Court:

Cadi Muhiddin's father Vehbi had a brother. I remember Haji Nouri. I did not hear if he had any brothers. I don't know Ahmed Ferid's father.

ESSAD EFF. This is my case. Case closed.

No. 40

Court asked to admit rebutting evidence.

FADIL EFF. I ask leave of the Court to call evidence to rebut the issue the onus of proof whereof is upon the plaintiff in Action
10 No. 41/45.

FUAD EFF. I object to rebutting evidence; and to enable me to base my objection on points of law, I would like to know from Fadil Eff. what are the points and what kind of evidence in reply he proposes to call.

FADIL EFF. In this case there are two separate issues, the proof whereof entirely lies on the plaintiff in action No.41/45. Therefore, the issues being separate, I am entitled to call rebutting evidence and I am not ^{by} law bound to state on what points I would call evidence. In
20 circumstances as this, i.e. when the issues are separate I have a general right and I base myself on this right.

Rules of Court, 1936, 0.33, r.7(b) reads as follows:— "The first party may not adduce evidence in reply except by leave of the Court etc.". The law of evidence deals more widely with this point. Phipson on Evidence, ed. 5 p. 30 says "where there is a single issue etc". To be short, when there is one issue the first party has no right to rebut; but when there are several issues and the onus of proof of one of them is upon the plaintiff or defendant then it depends on his discretion: he either goes into the whole case, i.e. combines both original and rebutting evidence, or as is more usual he adduces evidence on the issue
30 lying on him and reserves the right to call rebutting evidence should his opponent make out a prima facie case. White Book, 1929 "Evidence Generally", p.645 reads— "The Judge at the trial has a discretion to allow the plaintiff to adduce rebutting evidence in answer to evidence of the defendant in support of an issue, the proof of which lay upon him". It goes on.... "Plaintiff does not lose his right to have such discretion exercised in his favour by not giving evidence in the first instance to rebut the plea set up by Defendant." Taylor on Evidence, ed.12 vol.1 pl. 267 Sect. 385. This also shortly says that when there are several
40 issues plaintiff, in the first instance, either goes into the whole case or adduces evidence on the issues lying upon him and reserves the right to rebut his opponent's evidence should the latter make out a case. The second alternative is the usually accepted practice. At the same page there is a footnote with an asterisk. Formerly, as the defence became disclosed from pleadings the plaintiff was bound to go into the whole case; but as this procedure was considered inconvenient it has

*In the
Sheri
Court of
Nicosia
Kyrenia
sitting
in Nicosia*

*Defendant's
Evidence.
(continued)*

No. 40
Court
asked to
admit
rebutting
Evidence

Argument

4th July,
1946.

*In the
Shari
Court of
Nicosia -
Kyrenia
sitting
in Nicosia*

*Defendant's
Evidence.
(continued)*

*No. 40
Court
asked to
admit
rebutting*

*Argument
(continued)*

*Resumed
Hearings
23rd July,
1946*

been abandoned by various Court decisions and by Case **Penn v. Jack** which is reported in Law Reports, Equity Cases, 1866, Vol. II, p.314-318. This case gives all the surrounding circumstances of the decision. In a place the Judge says: "I should have to direct fresh proceedings to be instituted by the parties were the rebutting evidence excluded."

The main authority on which I base myself is that where there are two issues, as in this case, I have a discretion to exercise.

The plaintiff in 41/45 had to establish that he is an 'asaba' of the deceased Ayshe Hanım and Muhiddin, while the issue upon my client is quite separate — he has to prove that he is a 'zevilerham' and heir of the deceased. These are separate issues, and under the law to be an heir in the 'zevilerham' and to be an heir in the 'asaba' category are distinct matters. I, therefore request Court to allow rebutting evidence exercising the power given to it.

FUAD EFF:— Faced as we are with an application, I request for an adjournment so that I may have time to reply.

COURT: Adjourned to 23.7.1946, 4 p.m.

4.7.46.

(Sd) A. Burhaneddin.

23.7.1946.

Action No. 14/45.

Plaintiff Mehmed Ata Ali İsmet, of Nicosia, present.

Defendant Pembe Ali İsmet, of Nicosia, absent.

Fadil Niyazi Korkut Eff. for Plaintiff.

Defendant not represented.

Action 41/45.

Plaintiff Hussein Raji Ahmed Ferid, of Nicosia, present.

Defendant Mehmed Ata Ali İsmet, of Nicosia.

(1) Mr. Fuad, (2) Mr. Essad, (3) Mr. Hakki Suleyman for Plaintiff. Fadil Niazı Korkut Eff. for Defendant.

FUAD EFF:..In ordinary cases where there are several issues some of which lie on plaintiff for proof and some on the defendant, plaintiff is bound to prove the issues lying upon him but he is not bound to call negative evidence for the issues lying upon the defendant.

With regard to the issues lying upon defendant, the plaintiff, if he so desires, can adduce negative evidence when making out his case, or he can establish his own case and when defendant has made out his case he (plaintiff) by leave of Court, can adduce rebutting evidence with regard to those issues. In this connection I cite Wills on Evidence ed.2. p.38 and Phipson on Evidence Edn. VIII, p.37. and I cite particularly Shaw v. Beck, 1853 8 Exch. p.393 and Case of **Penn v. Jack**, 1866, 2 Equity, p. 314. Whichever of these two alternatives the defendant (plff) chooses there is one point he cannot avoid and that is that he has to bring all his evidence and conclude his case for those issues the proof whereof lies upon him. Vide the same pages of the two books I cited. I want to cite on this point **Brown v. Murray**, 1825 Ry & M. p. 254 and **Jackobs v. Tarleton**, 11 Q.B. 1848, p.421; **Jackman v. Jackman** 1889,

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14 P.D. p. 62; **Barker v. Furlong**, 1891, 2 Ch. p. 172.

Plaintiff has no right to call part of the evidence he has in proof of issues lying upon him and reserve the other part to call it as rebutting evidence after his opponent has adduced his evidence. This is so stated in cases I have already cited. Right is given to the Judge in certain matters to depart from this procedure, and this is (1) in cases where defendant has misled the plaintiff — **Barker vi. Furlong** and **Rogers v. Manley**, 42 Law Times, p. 585; for instance when his opponent appears to be willing to call a witness and fails to do so and defendant closes his. I cite **Barker v. Furlong**.

(2) Or when the plaintiff is taken by surprise by his opponent advancing a point to which he had not even hinted when cross-examining his evidence; **Bigsby v. Dickenson**, 4 Ch.D. 1876, p. 24.

In the present case leave is asked without any of these circumstances being stated to exist and we do say that they do not exist. I therefore request that plaintiff's application be refused; because plaintiff in action 14/45 had two issues lying on him; (1) that he is a "zevilerham" and (2) that he is an heir. Plaintiff in order to prove that he is a "zevilerham" and an heir has to establish that there are no "ashabi-feraiz" and "asaba" heirs at all and as a matter of fact this was the issue. In other words the plaintiff in action No. 14/45 had to establish that he was a "zevilerham" and heir of the deceased Ayshe Hanim and Muhiddin, and so he was bound to adduce all the evidence known to him and to exhaust his case concluding it in all its details. Otherwise he is considered to have failed to make out his case and to have done nothing.

A rebutting evidence can in no way be adduced as confirmatory evidence and in reinforcing plaintiff's case. I cite Phipson on evidence Edn. 8 p.37 **Gilbert v Comedy & Co.** 16 Ch. D. p.594., **Trimlestown v. Kemmis** 9 C. & F. page 749 & 781; **Barker v. Furlong**.

Our object and intention was quite clear both at the issues and from the cross-examination of their witnesses. We alleged that the father of plaintiff in action 41/45 was Ahmed Ferid and his father was Fahreddin Eff. and that Fahreddin Eff. was the brother of Ayshe Hanim and Muhiddin's father Vehbi. Faced with such clarity plaintiff in action 14/45 ought to adduce all the evidence respecting Ahmed Ferid and his father Muhiddin knowr. and available to him in order to prove his case. We deny generally that he has right to adduce rebutting evidence as plaintiff in his application does not allege any of the points I have stated i.e. that he was either taken by surprise or that he has been misled — they do not evidently base their application on such points. If they have special points for tendering rebutting evidence such points should have been put before the Court. Unfortunately we did not come across clear-cut rules governing consolidated action; however it is clear from the case of **Green v. Sevin** that where the issues on claim and counterclaim are identical no rebutting evidence can be called. We allege that the issues in these two cases are one. Plaintiff in action 14/45 had to prove that plaintiff in action 41/45 was not an 'ashabi-feraiz' and an 'asaba'. Therefore the

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(continued)*

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Resumed
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issues in appearance are two but in fact one. Our colleague in his argument on the application said that under our Laws a "zevilerham" and an "asaba" are separate things. From many text-books the one entitled Ilmi-Feraiz, by Ibn Salih Ahmed, at page 123 speaks as follows:— "A zevilerham in order to have a claim to heirdom, has to prove that there are no heirs from "ashabi-feraiz" and "asaba" categories". I would like to repeat that the plaintiff in action No.14/45 cannot be an heir unless he establishes that he is an heir from "zevilerham" category of Ayshe-Vehbi and as such entitled to inherit their estate and further that the said deceased persons have not had any heirs in the category of "ashabi-feraiz" and "asaba" and only then he could be an heir.

10

Plaintiff is not entitled to call rebutting evidence to strengthen his case after he has closed it.

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FADIL EFF.: The legal position, from authorities cited by my learned colleague, appears to be exactly the same as made out by my arguments at the previous session; namely, when in an action the onus of proof of one issue lies on plaintiff and of another on defendant, the plaintiff of the first party surely has a right to call rebutting evidence. In this connection furthermore I would invite Your Honour's attention to Taylor on Evidence edn. 12 Sect. 385 on the same point which runs as follows:— "Plaintiff will be entitled to the general reply on the whole case" etc. Having come to this juncture I would like to clear one point in my learned colleague's statement. My learned colleague said that plaintiff in action No.14/45 was neither taken by surprise nor misled. But from reading the legal points submitted by both parties Your Honour will observe that according to the authorities cited, where plaintiff and defendant have separate issues lying on them for proof, plaintiff definitely has right to produce rebutting evidence and when the issues on parties are identical i.e. same, as a principle, plaintiff has no right to call rebutting evidence; but even then the laws of evidence and the decisions on evidence speak that the Court has a right to allow rebutting evidence where plaintiff has been taken by surprise or misled by his opponent.

20

30

In this case neither the issues are identical nor do we allege that we have been taken by surprise or misled by the opponent. Therefore none of these points can be raised amongst the points we have already advanced. Consequently, according to the laws of evidence before you and the various decisions cited by the parties there remains one point to be considered and that is whether the issue on plaintiff in 14/45 and the issue on plaintiff in 41/45 are identical or not. If not, are they separate? The issues in this action are two: the first issue in action 14/45 is on plaintiff who has to prove that he is a "zevilerham" and heir of the deceased Ayshe Hanim Vehbi Eff. The second issue in action 41/45 is on the therein plaintiff who has to prove that he is the nearest heir in the asaba category of Ahmed Muhiddin Eff. and Ayshe Hanim Vehbi Eff.

40

The plaintiff in 14/45 has adduced all the evidence necessary to prove issue one which lay upon him, i.e. that he was a zevilerham and heir of Ayshe Hanim. and while doing this as my learned colleague said, he

had produced evidence to the effect that Ayshe Hanim Vehbi Eff. has no heirs from ashabi-feraiz or asaba category which was the ultimate end of his issue. Anything beyond that i.e. that plaintiff in action No.41/45 is not an asaba and heir not only does it not fall within the framework of the issue on plaintiff in action 14/45, but it also exclusively constitutes the essence of the plaintiff's issue in Action No.41/45. Having proceeded this far I have to touch on a point. The issue on plaintiff in Action No.41/45 in principle is separate from that on plaintiff in Action No.14/45 so far as asaba relationship is concerned; besides, issue 2, i.e. the issue on plaintiff in action No.41/45 charges him with the burden of proving his 'asaba' ship and heirdom to Ahmed Muhiddin Eff. in that action. This fact also indicates clearly that the issues on parties are separate from each other.

My learned colleague in his argument said that as their plea had been disclosed from their cross-examination (of the plaintiff's witnesses), the plaintiff in Action No. 14/45 while proving his case had to call negative evidence with regard to plaintiff's claim in Action No.41/45. This is contrary to all authorities of law so far cited and in confirmation of my word I cite again Taylor on evidence, p.267 footnote (x) which runs as follows: "Formerly when the defence became known from pleadings or notice, the plaintiff was bound to open all his case; but this practice has now been abandoned". Cases of **Brown v. Murray** and **Shaw v. Beck** say that this practice has been abandoned. I also cite White Book 1929 edn. the heading "Rebut", which speaks as follows:- "Plaintiff does not lose his right to exercise discretion to rebut the plea set up in the first instance by defendant although the nature of the defence was disclosed by the cross-examination of plaintiff's witnesses". So from all these authorities it clearly becomes evident that the application of plaintiff in Action No.41/45 is not prejudiced by the fact that his plea became disclosed in the course of the hearing.

My learned colleague cites a section on "zevilerham" heirs from the text book of Ibn Salih Ahmed Refik. This section has no applicability in this application and therefore it cannot be considered; because as I said in my previous statement my application was based not only on the fact that "zevilerham" and "asaba" are separate things; but I had also alleged, as it will be observed from the perusal of my arguments in which I had stated that the issues in this case in essence were separate — that under our laws the capacities of "zevilerham" and "asaba" were separate things.

My learned colleague said "the plaintiff in Action No.14/45 in order to plead that he is a zevilerham and heir of Ayshe, he has to establish that she has not got heirs in the ashabi-feraiz and asaba line". I confirm this; but this obligation to establish the non-existence of ashabi-feraiz and asaba heirs does not change the position of zevilerham and asaba from being separate things. And I again repeat that plaintiff in action No.41/45 while proving the issue the burden of proof whereof was upon him, did adduce evidence that Ayshe Hanim and Vehbi Eff. have had no asaba and ashabi-feraiz relatives I say again that anything beyond that, i.e. the

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question of whether plaintiff in action No.41/45 is or is not an asaba and heir of Ayshe Hanim and particularly the question of whether Ahmød Muhiddin has an asaba relative and heir is entirely within the issue of plaintiff in Action 41/45. To all these I have to add one point: the question of whether Ayshe Hanim has or not an asaba and heir is a different matter; and the question of plaintiff in Action 41/45 ascribing himself asaba-ship to Ayshe Hanim and Vehbi Eff and in the meantime to Ahmed Muhiddin Eff.; and further the mixing or not the grandfathers' names of plaintiff in Action No.41/45 together with the names of Ayshe Hanim's grandfather were burdens of proof lying upon plaintiff in Action No.41/45.

10

Therefore, by my this application I never intended to strengthen the proof of issue on plaintiff in Action 14/45 as argued by my learned colleague. The only objective of this application is to rebut the evidence adduced by plaintiff in Action No.41/45 for the proof of issue two herein, and to make this rebut, according to the authorities cited to Your Honour, is a right conferred upon the plaintiff in Action No.14/45. I accordingly ask the Court's leave to adduce this rebutting evidence as applied.

Court. Adj. sine die to consider the legal arguments and to give decision.

20

(sd) A. Burhaneddin,

Sheri Judge

23 7.46

No. 41

Sheri Court rejects application to rebut issue in Action No. 41/45

Upon the close of case in Action No.41/45 the first party, i.e. the plaintiff in Action No 14/45, who conducts the consolidated action, applied to Court through Fadil N. Korkut Eff. for leave to rebut the issue in Action No.41/45 the onus of proof whereof was upon the party in action 41/45. The other party however objected to this application. This Court thereupon considered the legal arguments and the authorities cited by both sides.

10 As in the text-books on Evidence there is not a specific chapter treating of the provisions applicable to consolidated actions, the Court physically had to consider the general rules.

In this consolidated action the issues for the proof of inheritance are as follows:—

(1) Plaintiff in action No.14/45 to prove that he is a zevilerham and heir of the deceased Ayshe Hanim Vehbi Eff.

(2) Plaintiff in action No.41/45 to prove that he is the nearest asaba heir of the deceased Ahmed Muhiddin Eff. and Ayshe Hanim Vehbi Eff.

20 According to these issues the parties by adducing all the evidence available to them were bound to prove fully and comprehensively their claim to inheritance, their alleged degree of relationship to the deceased and their nearest relationship to the deceased who left the estate & c. and that they themselves were the heirs. Both sides by turns adduced evidence and closed their case. When the parties came to Court they knew what was their position with reference to their claims.

30 Then the plaintiff in Action No.14/45 basing himself on the fact that there were two issues in this action and without giving any other reasons made the above application; and he further stated that as the issues were separate he was not bound to say on what points he proposed to call evidence and alleged to have a general right to call rebutting evidence. But even where the issues are several the adducing of rebutting evidence cannot be allowed without the necessary reasons and points being stated.

40 However, the Court is of opinion that the issues in this consolidated action in essence are one; and the plaintiff in Action No. 14/45 in his application having not specified and submitted to Court the points on which he proposed to call rebutting evidence his application is taken to be widely comprehensive and general. Such an unspecified and unqualified evidence as the one proposed to be called is likely to be confirmatory and so strengthening and corroborating the evidence already adduced.

Application of Applicant in 14/45 is therefore refused.

(sd) A. Burhaneddin
Sheri Judge.

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In the Sheri Court of Nicosia—Kyrenia sitting in Nicosia

No. 43

REBUTTING EVIDENCE

26th March, 1949.

M. Fuad and A. Essad for Plaintiff in Action No.41/55.

Fadil Niazi Korkut for Defendant in Action No.41/55.

No. 43
Plaintiff
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Rebutting
evidence
26th March,
1949.

Plaintiff calls rebutting evidence in accordance with the decision of the Supreme Court No.54 of the 28th January, 1949.

Andreas Yeorgiades of Nicosia, sworn :

My name is Andreas Yeorgiades. I keep the records of Births and Deaths of the Commissioner's Office, Nicosia. 10

(1) I produce the data of death of Haji Nouri Osman of Nicosia. Exhibit is a Register of Deaths No. 65 at page 66 whereof amongst registrations relating to Mahmoud Pasha quarter the date of death of Haji Nouri Eff. son of Osman Eff. is given as 27th January, 1902.

I produce a certified copy of the same entry issued by the Commissioner's Office.

Exhibits:
A.Y. (1)

(Copy of entry No. 105 dated 8.1.46 marked Exhibit A.Y. (1)/26.3.49.

(2) I produce the registration of Ahmed Ferid's date of death. Register of Deaths No.65 at p.39 among the registrations relating to St. Sophia Quarter gives the date of Ahmed Ferid Eff. as 1910. I produce a certified copy of this entry issued by the Commissioner's Office. 20

A.Y. (2)

Copy of entry No.109. dated 1.2.1946 marked A.Y.(2)/26.3.1949.

(3) I produce Ahmed Muhiddin Eff's record of death.

Exhibit is a Register of Deaths No. 1 for St. Sophia Quarter, among the registrations of the quarter giving the date of death of Ahmed Muhiddin Eff. as 25 10.1937 Serial No.152.

A.Y. (3)

I produce a certified copy of this entry issued by the Commissioner's Office. Copy of entry No.113, dated 20.3.1946 marked A.Y.(3)/26.3.1949. 30

In our office we keep the old Nufus Books of Turkish times. I produce the old Nufus Book.

Fuad Eff. Witness said he did not know Old Turkish. Before producing these records in Court I want to put him certain questions with the leave of the Court. All these records are in Turkish and I object to their production by this witness, and before he produces them I want to cross-examine him, with the leave of the Court, whether these were kept in accordance with the laws and regulations contained in the Deustur and whether the requisites of the Laws were carried out. But as the witness does not know what their contents are he cannot answer my questions. 40

Fadil Eff. This witness is here to produce documents only — parties are always entitled to summon witnesses to produce documents. The inability of a witness to give information with regard to the contents of a document does not bar him from producing same and no such restriction exists in the Evidence Law. As regards the kind and nature of the document, it is indisputable that it was a public document of the Government preceding the present one. Further this document is in the safe custody of the present Government and, as a public servant, of this witness, letting alone that it is as much a public document as an ancient one. Even
 10 a private document of over 30 years becomes an ancient document. . .

Phipson on Evidence 5th Edition, ¶497. "Ancient document proves...". The subject matter is one of pedigree and the parties have wider rights to produce evidence — even general reputation is admitted as evidence in a case of pedigree. Vide page 362 of the same book. In view of all these circumstances I insist on the production of these documents. If the witness cannot explain the contents this is rather against me than the other side.

Fuad Eff. First of all Court has to consider whether this is a public document; otherwise any sort of document is not produceable; and
 20 whether it is admissible or not. Consideration of this as a public document depends on certain qualifications; any document brought out from any office or nook of office cannot be produced in Court. My objection is against the scrutiny before production. If, however, they are produced for what they are worth and later found to be not public documents or admissible, I do not object to their production.

Court: Allows production.

(4) I produce the nufus registration of Vehbi Eff. son of Osman Eff. It is a Nufus Register for Abdi Chavoush quarter; page 68. Serial No.2363 Vehbi Eff. son of Osman Eff. Door No.7, Date of birth 1238 —
 30 Schoolmaster for children.

(5) I produce Plaintiff Hussein Raji's grandfather Fahreddin. It is a Nufus Register for Omerye Quarter, page 103 entry No.3573. Opposite the entry "Edib Hussein Eff. Mustafa Agha" there appear the names Fahreddin Eff. son of Haji Ahmed, Ahmed Ferid and Mehmed

XXnd.

I don't know old Turkish. I don't know what these Registers I produce contain or what they are. In the register of Omerih quarter at page 103 I see certain corrections and deletions. I don't know who made them or who deleted them. When the ink is altogether fresh then I make
 40 out that it was recently written but when it is old I cannot come to such conclusion. I am not in a position to distinguish between the ink in which the names Edib Hussein Eff. and Mustafa Edib were written in the register. When the pen bears a considerable amount of ink the script

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would look darker. I see no seal at this page (103) of register.

RXion Nil.

Mehmed Kemal of Nicosia, sworn :

Evd. My name is Mehmed Kemal, I am an L.R.O. Clerk. I have the Land Register for Lefka with me. I produce the oldest record of the property now standing in the name of Rifat Salih Hji Salih. It is Register No.1, page 34, Serial No.589 locality: garden. It passed from Fahreddin Eff.'s wife Zuriye Hanim to Haji Salih Eff. son of Haji Mulla Osman. The property is a garden 8 donums in extent.

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The most ancient proprietors of this property that the Land Registers can give are Fahreddin and his wife Zuriye. This registration was made in this book from the "Yoklama" (Roll) Books kept in Turkish times. The "Yoklama" (Roll) for the Lefka lands was made on the 18.8.1288. I produce a certified Search issued in respect of this registration. No.1244 dated 19.7.46 — marked M.K. 1./26.3.49. I had been at Lefka as an L.R. Clerk, and this is how I know the garden in question and because I had made its local inquiry. This locality and garden are called by the Lefka people as "Fahreddin Eff.'s garden". 10

Exhibits:
M.K. (1)

XXnd. In these documents there does not appear any record about Fahreddin Eff.'s father 20

This is a title-deed for a house at Omerye Quarter, Nicosia, standing in the name of Ali Riza Ibrahim Agha. Its previous owner was Murid Eff. Ahmed Eff. — boundaries are: heirs of Imamzade, Ali Riza, Mevlana Eff. Yorghanji Mehmed Eff., Yorghanji Mehmed Eff., Mehmed Zia and Street.

I produce the title-deed No. 13382 of 27th. December, 1900, marked M.K. (2) /26.3.1949.

I produce Search No. 929 data the 16.3.1946. Put in marked M.K. (3)/26.3.49.

I produce a plan taken from L. Registry records of 1885, relating to a house in the Omerye quarter. Marked M.K. (4)/26.3.49. 30

I produce the Search No.6508 dated 18.3.49 of Hussein Edib's house at Yeni Jami, marked M.K.(5)/26.3.49.

Looking at Search No.6508 I say that the date of transfer i.e. the date on which the sale was made by Hussein Edib was July, 1294. I cannot say whether one should have been alive at the time in order to make this transfer. (Witness went and looked at the record and continued his evidence). As far as I can say from the record Hussein Edib Eff. made a formal declaration and was then in life.

RXion Nil

Mehmed Ratib, sworn.

Exd. My name is Mehmed Ratib. I am a Clerk to the Delegate of Evkaf. The Delegate of Evkaf has in his custody the Registers of Old Sheri Courts, I look into Register No.48. I produce the Ilam (judgment) at page 27. It relates to the sale of a house at Yeni Jami Quarter. In this judgment the name of Vehbi is given as Mehmed Vehbi Eff. son of Injezade Osman Eff.

10 I look into Register No.50 page 76. There appears an entry in this book to the effect that Hji Nouri Eff. had divorced his wife, and here the name of Haji Nouri Eff. is given as Elhaj Mustafa Nouri Eff. son of Injizade Osman Eff.

I look into Register No.54, page 66. Here there is a Vakfiedh (deed of dedication) describing the house of Haji Nouri Eff. which it is put down, will pass on his death to his wife Hadije Hanım, then to dedicator's brother Mehmed Vehibi Effendi and after him to his children and then with the approval of Judge an administrator will be appointed and the surplus revenue will go to the administrator. I produce it.

Fuad Bey: I submit that the evidence so far produced has been confirmatory and not rebutting.

20 **Fadil Eff.** I contend that all of it has been rebutting.
(Witness Continues).

I look up Register No.51 page 112. Here Hussein Edib son of Mustafa sells a house situate at Omerye quarter to his son-in-law Hussein Fahreddin Eff. son of Hji Ahmed. I produce it.

XXnd. The books I produced are registers of Ilams (judgments, orders etc.). In this register No.51 the signature and seal of the Cadi do not exist. The date of Ilam is 24 Rebiulevel, 1290, and does not bear the hand and seal of Cadi.

30 **Re-exd:** At the bottom of the Ilam there appear witnesses. All Ilams are written in this form and it is identical.

The signatures and seals of the cadis are not affixed. I don't know if this was the way of keeping a register.

(Witness reads a letter from the Turkish Governor appearing at page 1).

Through Court :

The names of witnesses appearing in the register are not their signatures, it is in the hand of the person who wrote them; and the letter from the Governor is also a copy. There is also a letter of the Governor at page 1 of Register No.48, this does not appear in other registers. Ilams are issued now as well. They are signed and sealed.

40 **Fadil Eff.** This is all my evidence.

Court. Adjourned to 21.5.49, 10.00 a.m.

(Sgd) A. Burhaneddin,

Sheri Judge.

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21.5.49

For Plaintiff: M. Fuad and Essad

For Defendant: Fadil N. Korkut.

Court: Advocates of both parties not being well, by consent, adjourned to 25.5.1949, 9.00 a.m.

(Sgd) A. Burhaneddin,
Sheri Judge.

No. 44
Rebutting
evidence

Case for
Defence
25th May,
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No. 44

Rebutting Evidence — Case for Defence

25.5.1949

Appearance as before.

Fuad Eff. With the leave of the Court I propose to start from the rebutting evidence

Nufus Books produced as rebutting evidence: I had objected to the production of these and now I say they are not admissible as evidence having been formulated contrary to the provisions of laws and regulations relating to the keeping of Nufus registers. According to the law of evidence they cannot be produced as a public document.

Phipson on evidence 8th edition, p.332. At another page this book deals with errors and deletions.

I want to refer to some of the provisions of the Regulations relating to the Nufus registrations. I cite from Supplement No.2 to Deustour p.15, regulations 5. 6. Regulation 5 describes the Nufus register, as well as regulation 6. So the Register proposed to be put in evidence is not one provided by Law. I cite Supplement to Deustour No.3 page 43 "Description of Nufus Register, Regulations 22. Page 49, "Free of deletions and erasures...".

I cite from supplement No.3 to Deustour, pp.54-55 "Particular remarks". The book proposed to be put in evidence having been kept contrary to the regulations laid down cannot be admitted as evidence.

In these circumstances every law would disallow the production of documents like this as evidence. Though inadmissible nevertheless we may examine. them:—

Nufus Book; entry relating to Hussein Edib and the name Fahreddin Haji Ahmed alleged to appear opposite this name:- This entry, as it will be seen from Search No. 6508 of 18.3.49 marked Exh. M.K.5, shows that Raji's grandfather was Hussein Edib and not Edib Hussein and that he was the owner of the house situate at Yeni Jami quarter. This Exhibit contradicts the name Edip Hussein. Besides, the entry in the book is Edib Hussein son of Abdullah and the word Abdullah is deleted and Haji Mustafa written over it. Who did this and when, we don't know. Is Edib Hussein's father Abdullah or Hji Mustafa? There is no other evidence before you to tell us.

10

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The Entry "Omerye" in the Nufus register : Search No.929 dated the 16.3.1946 marked Exhibit M.K.3.

When this Exhibit is examined it will be seen that Raji's grandfather Hussien Edib had a house at Omerye quarter, which passed to his daughter Zuriye. A plan of this house detached from the 1885 Land Registry documents is an Exhibit marked M.K.4. Among the boundaries given in this plan the property of Zuriye's neighbour Ahmed and his wife Saime are mentioned. Saime was neither the wife of Hussein Edib nor of Edip Hussein. In this plan Fahreddin and Zuriye's daughter Nessibe Fahreddin are given as boundaries.

While there is a house in Omerey quarter belonging to Fahreddin's wife and to his daughter Nessibe, it is remarkable how Fahreddin was brought to be installed in the house of Saime who was the wife of Ahmed and a neighbour of Zuriye. The fact that there was one Saime, wife of Ahmed, who is referred to in the plan as a boundary, and that she was known as lame Saime has been corroborated by wit. 19 Muzeyyen and Dervish Hji Hussein, an Aza of Omerye Quarter; and further that Saime had a son called Murid and that this Murid had a son called Ziaya who was a retired L.R. Clerk and landed proprietor, and that he is still in life. Witnesses referred to above proved that there was no other Saime in the Omerye quarter except this one.

This person's i.e Hussein Edib's or Edib Hussein's house No. at Omerye is given as 14; his date of birth 1228, his alleged wife Saime's date of birth as 1223 and of their marriage as 1240. When the dates of birth of this pair and the date of their marriage are compared it will be observed that Edib Hussein was 12 and Saime 17 years of age. This shows how far this document is credible.

In short I submit that this Register, which was not kept according to the provisions of laws, regulations and "remarks" governing registration of the Nufus, contains many contradictions and it arouses suspicions as to who this Fahreddin Hji Ahmed appearing opposite the name Edib Hussein was who has no relation at all with Plaintiff and how and when this record was made. I leave the scrutiny of this to the Court. I also pray you, as jury, to examine the ink and the script of these entries. This so-called Nufus Register, which is an exhibit, is no evidence. An Ilam from one of the books called Registers was put in as evidence — Register No. 51, page 112.

First of all what is this register: is it a private or public document? It cannot be considered a public document. Phipson on evidence, 8th Edition, page 328 describes what are public documents. In any case these have not been produced from a proper custody.

I submit that this register also was not kept in accordance with the relative regulations: Deustour Vol. 4 page 79 — regulations 7, 10 and 15. Deustour Vol. 1, p. 311 part dealing with Sheri Court rules, rule 53. Rules relating to Sheri Court Books. Deustour Vol. 4, page 84, rules 6, 10, 11, 13 and 14.

I submit that this record to the production of which I had objected,

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having not been kept properly as required by the Sheri Regulations already cited by me it cannot be received as evidence. I especially call your attention to the "proper custody". If these Exhibits are found to be in accordance with the law, then there is express provision in whose custody they should have been; whereas these books were produced by the Evkaf Officer and they are being kept by the Evkaf Office.

Anyhow, I will now deal with the nature of these Exhibits. Exhibit M.K.3 — Search No. 929 dated 16.3.46. From the reading of this Exhibit it is clear that the house No. 14 referred to therein is the same house alleged to have been sold in the register also the boundaries. It is stated in it that the house passed from Hussein Edib to his daughter Zuriye. The official Land Registry record proves that this house passed from Hussein Edib to his daughter Zuriye.

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Whereas the Vakf register shows that this house was sold by Hussein Edib to his son-in-law. Assuming for a moment that this register which does not comply with the Law has an evidential value, then it contradicts the Search and the Land Registry records. Had this statement in the register been correct, the house, on Fahreddin's death, ought to have passed to his children and this transaction would have appeared in the Land Registry records. However, no evidence was adduced in Court to this effect.

20

According to our allegation and proof, our Fahreddin died in Istanbul before Hussein Edip died and this was established by the uncontradicted evidence of Hadije Abdurrezzak, Muzeyyen Mustafa and Hussein Mehmed of Kiomurju.

I want to touch again the question of Proper Custody with reference to the Sheri Court Registers with reference to their keeping and custody.

I cite Deustour Vol. 4 p.83, regulation 10. I ask that regulations 11 and 13 be examined.

30

The Rules of Court provide for the custody of documents. Rules of Court 1938; there is no provision that the Sheri Court registers shall be kept by the Evkaf Office. This is what I have to say with regard to the rebutting evidence.

Now let us take the main claim:—

There are two consolidated actions before you:— Nos. 14/45 and 41/45 in which plaintiffs claim that the estate of the deceased Ahmed Muhiddin of Nicosia and of his direct sister the deceased Ayshe Hanim Vehbi Eff. belong to them. In action No. 14/15 plaintiff Mehmed Atta and others as zevilerham claim to be the heir and in Action No. 41/45 plaintiff Hussein Raji. as asaba, claims to be the heir of the estate. There are vast contradictions between the evidence adduced by plaintiff in action N. 14/45.

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With the evidence adduced before the Court in Action No. 41/45, it has been established that Mehmed Atta, plaintiff in action 14/45 on va-

ious occasions and dates and in the presence of various witnesses admitted that my client Raji was an heir on the asaba side of Ahmed Muheddin and Ayshe. I contend that most of the evidence called in action No.14/45 is untrue; I take as an example Zehra Nevber, a witness for Atta. It is only this witness who says that she had heard from Muhiddin that Atta was his heir and she continues: "Muhiddin told me that he had dedicated his property to Vakf in order to deprive Atta from inheriting." But this witness in her XXn says that so long as his sister Ayshe was alive 10 Atte could not inherit This ridiculous statement of Muhiddin is unbelievable. This Zehra further says that she did not tell anybody until after the properties were made Vakf.

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I will deal with the point of Atta's claiming the hand of Ayshe after Muhiddin's death. This is one of the important points proving that Atta was not an heir. Were he an heir he would not have made an offer of marriage to a 70-year old woman two years after the first offer.

Now I will deal with the evidence adduced by us as against this statement of Muhiddin alleged to have been made by him.

One of our witnesses, Dedezade Assim Eff., when he met deceased sitting with Raji at Galata, Istanbul, the deceased acknowledged him, 20 Raji, to be an heir. This witness is known to be a property-owner and honest; and the other side could not show cause why this man should come and give such an evidence on oath. They simply alleged that this man did not meet Muhiddin in Istanbul, and said they would also get a passport to be produced

Mr George Chryssafinis in the Supreme Court when dealing with rebutting evidence said that among other evidence there would be produced a passport; however we have not seen such a passport.

Fadil Eff: I object to this passport question being raised as there is no record whatever as to what was said in the Supreme Court.

30 **Fuad Bey:** If there is no such record then I don't object to its being discarded and I will raise it myself.

As to Dedezade Assim, as soon as he finished his evidence he went away and came back with his passport and produced it in Court, and so far it is there as an Exhibit. From it it can be easily seen whether Muhiddin and Assim were in Istanbul or not. No evidence to rebut this was produced.

There is strong evidence that Raji is an heir not only of Ahmed Muhiddin but also of Ayshe.

40 Dedezade Assim was the only neighbour of Haji Nouri whom we allege to be a brother of Vehbi Eff. and Fahreddin. He said that on several occasions he (Hji Nouri) admitted that Raji's father was Ferid who was his full brother.

As to Ayshe Hanim's acknowledgement. I want to refer you to the evidence of Nazife Tahir This is a woman who had been in the service of

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Muhiddin and Ayshe for 20 years until Ayshe's death. She said clearly in her statement that Ayshe had acknowledged to her that Raji was her uncle's grandson and that she used to talk about him.

The most important point is Atta's own admission. We have the evidence of Ali Raji; he is a man who has been in Government Service for many years now and he happens to be a relative of the wife of Atta's son Fetthi; and it was on account of this that Fetthi asked Raji's assistance in connection with the theft of certain goods after the death of Ayshe and that a few days later Raji met Atta. There is evidence to the effect, and Atta made a reference to Raji saying "If there is a real heir, that is Raji, the Commissioner of Police in Turkey, from whom we have not heard for the last 15 years and my conviction is that he must have died." But he did not stop there, he further explained the degree of relationship between Raji and Muhiddin and Ayshe, and said that Raji was a relation (of Muhiddin) on the paternal side and he himself on the maternal, and assessed the inheritance left between eight and ten thousand pounds. The other side could not show any reason why this witness should not be believed.

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Another witness to Muhiddin's acknowledgement is a retired public officer Hassan Shevket, who was a friend of Muhiddin.

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When Ferid was unemployed, Muhiddin sent him to the Commissioner's Clerk Shevket to secure in some work; and Shevket had him appointed as Tithe Officer; and later when Muhiddin saw Shevket he said "I am grateful to you for having appointed my cousin as Tithe Officer."

The other side could not show any reason why Shevket should say so.

On the same point we have the evidence of witness No. 5 Mehmed Naji who talks about help rendered to Raji and on being questioned he said that Muhiddin had said he (Raji) was his cousin.

Mehmed Atta has acknowledged before other witnesses that Raji is an heir on the asaba side. At the sale of Ayshe's goods by the Sheri Court, Atta said in the presence of Auctioneer Abdullah Dervish, Assaf Kiamil, Assim Hussein and Yussuf Zia that the heir of Cadi Muhiddin and Ayshe was a Police Commissioner in Turkey and that as he was dead he becomes as heir. There were some other witnesses present at the time this acknowledgment was made. No rebutting evidence was adduced to this as well.

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Witness 6, Hussein Mehmed of Kiomurju:

I beg leave to make certain short submissions in connection with what passed between this witness and Atta at Kiomurju, and about what stages their meeting had passed through.

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According to Atta Bey this witness was in the service of his grandfather the Imam of Tahtalkala and he knows Atta and his family well and he also frequented Haji Nouri's house. Atta Bey who knew that this witness possessed a great deal of information about his family, went in company with his advocate and one of his witnesses Hayreddin, to

Kiomurju to see him to connection with this information. There as the information given by this witness did not suit his desires he warns him saying "Think over well" and leaves. This witness at the village said that Haji Nouri and Vhbi had also another brother Fahreddin who was the eldest of all. Atta Bey in examination in chief said that he did not summon this man as a witness as he was a dotard. This old man who had been subjected to a severe cross-examination by my learned colleague answered all questions put to him and gave a true and unbiassed testimony. This witness said that as he was working in the Omerye Quarter of his father near Zuriye's house, he became acquainted with Fahreddin and his wife Zuriye and that he bought vegetables from their garden and that he knew Fahreddin to be wearing a turban and that he later went to and died in Istanbul. And this witness clearly established that with him Haji Nouri used to send a basket to this widow of his brother Fahreddin. That Haji Nouri and Vehbi were married with the daughters of the Imam of Taktakalla and that he used to visit them. He knows their names, nicknames and residence. I leave to Court to say whether this witness who even remembers where he was circumcised is a dotard or not.

20 **Evidence of Nazife Tahir.**

I want to repeat what this witness said in examination in chief. "I did not hear from my mistress that Atta was her heir".

Hadije Abdurrezzak :

She is a woman brought up by Vehbi and said to the Court that she had heard from her master Vehbi that Vehbi, Fahreddin and Haji Nouri were brothers; and she even said that when information came from Istanbul that Fahreddin had died Vehbi was naturally weeping and threw away the henna which was going to be used on the occasion of Bairam.

Pembe Hassan :

30 Fahreddin's daughter Munteha used to frequent Havva Mulla's house and used to call Havva Mulla as her aunt. Havva Mulla used to tell this witness that Munteha was the daughter of her brother Fahreddin. Havva Mulla was the sister of Vehbi and this Nouredin. Further this witness and Havva Mulla used to go together to Haji Nouri's house, and Haji Nouri used to complain against Ferid to this Havva Mulla and his other sister Ayshe, and also told them who Ferid was. According to Sheri Clerk Mehmed Arif's evidence and certificate (No. 2) issued by the St. Sophia Mukhtar Raji was informed as an absent heir, while Atta who had acknowledged Raji on being questioned said he did not know him and that he had come to know him as a party in the action. I allege that the evidence adduced by us has clearly established that Raji is an heir on 'asaba' side.

40 Pembe Ali Ismet, defendant in Action No.14/45 did not come to Court and give evidence on oath and thus deny that she and Raji were heirs. I submit, Your Eminence, that this is remarkable.

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Fadil Eff.:

As my learned colleague's address has been lengthy and detailed, in which references were made to certain laws, I apply for an adjournment in the name of justice and to enable me to reply.

Court : Adjourned to 4th June, 1949.

(Sgd) A. Burhaneddin,

20.5.1949

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**REBUTTING EVIDENCE — Plaintiff's Replies
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(Appearances as before.)

Fadil Eff.

There are two issues in this consolidated action — Issues 1 and 2. By the decision of the Court Plaintiff in Action No.14/45 has been made the first party and plaintiff in Action No.41/45 the second party. As an easy reference henceforth I will call plaintiff in Action No. 14/45 as the first party, and plaintiff in Action No.41/45 as the second party.

According to issue (1) first party has to prove —

- (1) that Ayshe Vehbi is a relation on the line of zevilerham, and 20
- (2) that he is an heir of Ayshe' Vehbi —

The first party has established his first issue i.e. that he is the son of the deceased Ayshe Vehbi's maternal uncle and accordingly that he is the nearest zevilerham relative of the said deceased.

The evidence of the first party on this point was also corroborated by the witnesses of the 2nd party. As regards the 2nd issue, i.e. whether the first party is an heir of the deceased Ayshe Vehbi; the first party has amply proved this as well, and in this way:- It is a well known fact that for the first party to become heir of Ayshe Vehbi, no heir called ashabi feraiz (sharer) and asaba should exist on her death. The first party has established beyond doubt that the said deceased has left no "ashabi feraiz". The evidence by the first party in this connection has been corroborated by that of the 2nd party. Further, respectable and credible witnesses have been called and credible and reliable documents produced that after Ayshe Vehbi's death no 'asaba' heir was left. First of all the witnesses of both parties agree that Ahmed Muhiddin, who is the only brother of the deceased, died before Ayshe and Haji (Nouri). It has also been established both by oral and documentary evidence — Exh. M. R. (11) that Haji Nouri, the deceased's only paternal uncle, died before the 30

deceased, and that the two sons of her said uncle Rifki and Houlousi died before their father Haji Nouri and consequently before the deceased Ayshe Vehbi.

This evidence was not XXnd by the 2nd party and so they admit same. The witness of the second party joins with the witness of the first party especially on the point that Haji Nouri's death had occurred, earlier.

10 1st party has also produced credible and reliable evidence in Court that Vehbi Eff. had no other brother except Haji Nouri. So it has been clearly established that the first party and other people mentioned in the writ of summons are the nearest relatives on the side of zevilerham of the deceased Ayshe Vehbi and as such her heirs. Therefore the first party becomes entitled to a judgment of the Court as per their claim in Action No.14/45 unless 2nd party makes out his own issue and proves that he is a relative of the deceased on the 'asaba' side.

20 As it will be evident from the notes of the case the second party alleged that the deceased Ayshe, apart from Haji Nouri, had also another paternal uncle called Fahreddin, that he (Raji) was a grandchild of this Fahreddin and that therefore he was an heir not only of Ayshe Vehbi but also of pre-deceased Ahmed Muhiddin. But we do not deny that the second party's grandfather was Fahreddin. The question is whether Fahreddin was such a brother of Vehbi who is father of Ayshe and Ahmed Muhiddin as to bring about an 'asaba' relationship. Let us now review the evidence adduced in this connection by the 2nd party. To begin with, I submit that the second party could not produce a single document establishing a brotherhood and accordingly 'asaba' relationship between Fahreddin and Vehbi — not even that they were ordinary relatives.

30 Further, not a single witness testified to the alleged relationship, on his personal knowledge, as contemporary of Fahreddin. It is a fact that two witnesses of the 2nd party, i.e. Hussein Møhmed of Kiomurju and Hadije Abdurrezak stated that they personally knew Fahreddin: however, even these two witnesses as others base their evidence on (certain) acknowledgements. So all the evidence adduced by the 2nd party is an evidence wholly based on acknowledgements.

These alleged acknowledgements are divided into two categories, of evidence :—

- (1) The so-called acknowledgements made by the 1st party that the second party is an 'asaba' relation of the deceased;
 - (2) The evidence of the alleged acknowledgements by the 2nd part's deceased relations Ayshe Vehbi, Ahmed Muhiddin and
- 40 Haji Nouri that he (the 2nd party) is their relation.

With regard to the first category; five auctioneers were summoned to Court to give evidence. On examining the evidence of these auctioneers who appear to have learned their part by heart, the Court will see that they are full of contradictions from one end to the other. From their own evidence you will see that they are either partners, or those who are not,

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as admitted by them, keep their goods in the partners' shop and that they traffic in the same place. In other words the Court is faced with witnesses who have unanimously appeared before the Court in accordance with the old concensus procedure. From the evidence of these very witnesses you will observe that when Fetti, the son of 1st party, bid up at the sale of the deceased Ayshe Vehbi this having prejudiced the interests of the auctioneers some of them raised objections and therefore they are biased witnesses.

The words quoted as having been uttered by the 1st party at the place of sale where, according to the evidence, there was a crowd, were not corroborated by any other witnesses present there other than the auctioneers.

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Sheri Clerk.

Mehmed Arif Eff. who conducted the sale and was later called as a witness for the 2nd part was not questioned at all by the 2nd party in connection with this alleged acknowledgement and he did not say anything about it in his evidence either. Whereas had a discussion in fact occurred at the sale the first person to hear it would have been Mehmed Arif.

In addition to what I have already said I would invite Your Eminence's attention to the peculiarity of their rushing to Court in a group to give evidence and the suspicion that this attitude arouses. Apart from this group of auctioneers one more witness was brought before the Court. This witness, giving his name as appears in the evidence, is Sergt. Ali Raji. Though this witness speaks of another acknowledgment made at a different time and place, yet the words he quoted in his evidence are almost the same as quoted by the auctioneers.

20

No doubt, the likeness of the words quoted by this witness with those quoted by other witnesses suggests suspicion rather than credibility. I don't know what made this witness, whose whole evidence shows how zealous he was, to come to Court. I would draw Your Eminence's attention to one point, i.e. to the principle of the Law of Evidence generally accepted that some people are apt to mix their own observations and what they had heard first with what they hear later and remember them in the frame of their own mind and make themselves believe that what they had heard on the first occasion was the same as what they heard later. This is the reason why the commentators of the Law of Evidence advise the Judges to be careful in believing the evidence of these witnesses when they allege that they have heard something, which cannot be discredited by any other witness and stand singly.

30

Unfortunately, policemen, who are so keen to obtain a conviction against all accused that fall in their hands, are often witnesses of such inclination. Therefore witness Ali Raji has either altered the words used by the 1st party for reasons unknown to us; or as I have already submitted brought himself to believe that that was what he had heard.

40

Because, first of all to believe this witness, one must think of the

man, who immediately after Ayshe Hanim's death had her house sealed, rushed to the police asking them undertake the control of her movables and three days after the death brought an action; he would have been mad to have said here and there that somebody else was an heir. If the Court believes him to be mad then his words bear no value.

10 My learned colleague Fuad Bey submitted that no rebutting evidence has been produced. Whereas the 1st party has rebutted this evidence by his own evidence. The 2nd party's witness Mehmed Arif, also, indirectly rebutted this evidence in his re-examination. According to Arif Eff.'s evidence, this witness himself informed the 1st party, after Exh. M. A. (2) had been filed in the Sheri Court, that some one called Raji was alleging to be an heir; and further we find out from the evidence of the same witness that Ayshe Vehbi had died on the 8th April, 1945. Exhibit M.A.2 was filed in Court on the 12th April, 1945 and it is from this Exhibit we find out that Raji claims to be an heir. The action by the 1st party was filed in Court on the 12.4.1945, too.

I hope the Court will consider all these points conjunctively with the so-called evidence of acknowledgements which it will not believe.

20 Let us now deal with the 2nd category of evidence on acknowledgements :-

30 Assuming the Court believes the evidence of witness 4 Hassan Shevket, witness 5 Mehmed Naji and witness 9 Ahmed Hji Hafiz Hassan, I allege the evidence of these three witnesses is not such as would make out the issue No.2 settled in this consolidated action, i.e. the evidence of these witnesses does not establish the 'asaba' relationship. Hassan Shevket states that when Ahmed Muhiddin was talking about Ahmed Ferid, who is the father of the second party, he referred to him as his "cousin". It is needless to say that a "cousin" may be on the zevilerham side as well. Witness Mehmed Naji states that Ahmed Muhiddin in making reference to Ferid used both words: "He is my cousin" and "my uncle's son" at the same time. I don't think Your Eminence would believe this evidence letting alone that this witness could not explain whether this "cousinship" and "uncle's sonship" was on the maternal or paternal side of Muhiddin Eff.

Now, as to evidence of Ahmed Hji Hafiz Hassan :-

This witness says he did not inquire from Havva Mulla what sort of brothers Vehbi and Fahreddin were and that he does not so far know it.

40 I must add that Hassan Shevket and Mehmed Naji deposed to what was spoken about 45 years ago, while Ahmed Haji Nafiz Hassan deposed, according to his evidence again, to what was spoken 70 years ago when he was 5, 6, 7 years of age.

The lapse of so long a time no doubt brings down the value of their evidence; especially when none of these three witnesses is in a

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position to explain how they came to remember the words which were used amongst other talks of old. If we particularly take the evidence of Ahmed Hji Hafiz Hassan we shall notice that his memory is too weak to remember it. When I XXnd him he could not say the dates of his parents' death.

I leave to Court to say how far this witness of such a weak memory can be believed to remember what had been spoken 70 years ago; and whether it is believable that Havva Mulla would have made an acknowledgement of pedigree to a five or six year old child.

I will now deal with the other witnesses of the 2nd party :

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Witness No. 16 Fetine Hussein, witness No. 17 Remji Yussuf and witness No. 19 Muzzeyyen Mustafa are relatives of the 2nd party and therefore not unbiassed. These witnesses are not credible not only because they are relatives of the 2nd party but also on account of the following points :-

These relative witnesses could not give any better information than the strangers about their alleged relatives Vehbi and Haji Nouri and even about Ahmed Muhiddin and Ayshe Haji Vehbi who were in life until recent times. Especially 67 year-old witness Remzi Yussuf who is a nephew of the 2nd party and grandson of Fahreddin and who took an active but arbitrary part in this matter before the institution of Act. No. 41/45 has proved to have been very disinterested in Vehbi and his children.

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First of all he does not know Vehbi's sister Havva Mulla, who according to his testimony must have been his paternal aunt — not only does he not know her but also gives her name in Court wrongly as Zehra. Further he says he does not know Ayshe Mulla's house and admits that he was not visiting Muhiddin and Ayshe Vehbi.

Fetine Hussein and Muzeyen are also in the same position as Remzi as regards these family particulars; and as I will later submit even the 2nd party appeared before this Court and gave evidence in the same disinterestedness.

30

If relation — witnesses had tried to pass the inheritance to any one of their relatives I could understand it; but I cannot understand the reason why they should be so deeply disinterested in a family whose inheritance they claim and I am sure Your Eminence will not be able to understand it. When I speak of "the reason why" I mean the reason which would justify them for this conduct. I submit this disinterestedness proves that no relationship had existed between them. Before closing on this argument, I would touch a point:- The explanation of Remzi Yussuf, why he could give some information to Court about Havva Mulla, is that he attended the School run by her and so he knew Havva Mulla.

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Now, Sir I am going to deal with the witnesses who are not relatives of the 2nd party. One of these is witness 8 Pembe Hassan. This witness

was a maidservant of Vehbi's sister Havva Mulla and had been in Havva Mulla's service for a long time. This witness, contrary to the kin-witness, appeared before you with a sense of interest, i.e. she was equipped with some information with regard to Havva Mulla — whose adopted daughter she was — and about Havva Mulla's brothers; but she turns out to be disinterested with Fahreddin's family. Not only if Fahreddin and Vehbi had been, as alleged, brothers but if they had simply been ordinary relations, this witness who had been in Havva Mulla's service for 19 years would have had some sort of information about the family.

10 This witness does not know where Ahmed Ferid, who was the father of the 2nd party and according to their own contention Havva Mulla's nephew, was living. Still more peculiar it is that she does not know if Ahmed Ferid had another brother i.e. if she had a nephew by Fahreddin, while in fact Ahmed Ferid, according to all evidence adduced including the Nufus Book, had a brother named Møhmmed Edib. It is very peculiar still that this witness does not know Ferid's mother and Fahreddin's wife Zuriye. When she was XXnd by me she said: "Havva Mulla told me that her father's name was Osman; but she did not tell me who Fahreddin's father was. It is evident from this statement
20 of hers that she concealed a truth, i.e. the fact that Fahreddin's father was not Osman.

Another witness who is not related to the parties is Hussein Mehmed of Kiomurju :-

This witness testifies that 70 years ago when he was twelve or thirteen years old he went to Haji Nouri's shop to buy muslin and there Haji Nouri made an acknowledgement to him that he was a brother of Fahreddin and even that they were full brothers. One to believe this strange evidence has to believe also that merchant Haji Nouri made a pedigree acknowledgement to a boy of twelve or thirteen who visited his
30 shop to buy muslin and also that the witness was capable of remembering this acknowledgement after the lapse of 70 years. I do not think Your Eminence will believe such strange stories. The period of 70 years is what the witness has repeatedly given. Witness himself says that when this conversation took place Fahreddin was in life, whereas according to the Nufus Book adduced by the first party as rebutting evidence Fahreddin died in 1293; therefore when the witness attributes the conversation to a time 70 years back Fahreddin was not alive then — he must have died in Istanbul, according to Hadije Abdurrezzak, at least 3 years before. The Court surely remembers the narrative way this old witness,
40 who had once been suspected by the police of murder, gave his statement.

From the evidence adduced one observes that this witness was clever enough to put his head up against both parties; anyway in the long run he preferred to go with the 2nd party.

I do not propose to dwell further upon the evidence of this unreliable witness whose testimony is so full of peculiarities. Another witness not related to the parties is Dedejade Assim Bey:

This witness as well does not possess any personal information about

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Vehbi's family. He simply testifies to two acknowledgements of two dead persons as alleged by him. The first one was Haji Nouri's acknowledgement, which what I made out from his XXn, must have been made 50 years ago while Haji Nouri was talking about Ferid to whom he referred as his brother's son. But witness never inquired what kind of brotherhood it was and he does not so far know. Therefore, even if this part of his evidence is believed it is of the kind of evidence as given by Hassan Shevket and others not proving any "asaba" relationship.

With regard to the other acknowledgement:- This witness says about 20 years before his evidence he met Muhiddin in Istanbul. There Muhiddin pointing to the 2nd party asked the witness if he knew him and the witness replied, "Yes he is your uncle's son". Reasonably talking this conversation should have finished there; but witness proceeds further and says Muhiddin added "he is my heir". I contend that there was no necessity at all for Muhiddin, who had been a Sheri Clerk and Cadi for a long time and well-known as unmarried, to add the words "he is my heir" when referring to his uncle's son, especially when the topic of the conversation was simply whether he knew the 2nd party or not and after the witness replied he knew him. The words "he is my heir" is altogether a pleonasm. Besides this peculiarity of his in his evidence I would also invite your attention to the fact that his memory is very weak. To my XXn he replied that he did not know dates and accounts. He admits to be paralysed and that the stutter in his tongue is due to paralysis. When he first came before the Court he said he had gone to Istanbul between 1926 and 1928. When he found his passport and appeared before the Court on the second occasion it was made clear from the passport that he had gone between 1925 and 1929. This witness's evidence referring to Ahmed Muhiddin has been contradicted by the first party's witness 9 Zehra Nouri. To this witness Muhiddin in his sufferings used to complain that the 1st party was apathetic towards him. Muhiddin said "Atta wants only to inherit my property — he is not interested in my well-being".

My learned friend finds this evidence ridiculous. In fact, however, it is not so. Muhiddin having been a veteran Cadi he knew better than anybody else that his property would pass after his sister Ayshe to the 1st party. My colleague finds it ridiculous because this witness said that on Muhiddin's death the property would pass to Ayshe and after her death naturally to whoever might be the heir if it is not made vakf.

Dedezade Assim Bey's evidence referring to the words spoken by Hji Nouri has also been contradicted by other evidence. Dedezade alleges that this acknowledgement by Haji Nouri was made at the market of drapers (Bazirganlar) when he ran a shop there. The witness says it was at the time he had a shop adjacent to Haji Nouri's and that is how he came to see him and hear the acknowledgement. To my XXn he replied that for six years he was trading jointly with his uncle and that he opened an independent shop of his some 40-45 years ago. In these circumstances the alleged acknowledgement must have been made at most 50 years ago.

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Mehmed Hayreddin, 1st Party's witness :

He entered the service of Haji Nouri's brother-in-law as an adopted child 52—53 years before giving his evidence in this Court. This witness testifies that 52—53 years ago when he was taken by this family, Haji Nouri's shop was not at "Bazirganlar" (drapers) market but at Tujjar-bashi street and that this shop he kept until when he died. This part of Hayreddin's evidence has been corroborated by Remji Yussuf who is a witness for the 2nd party and a cousin of his. Remji Yussuf gave his age on the day of his evidence as 66 and the date when Haji Nouri's shop was at Bazirganlar market as 60 years back. All these show that the evidence of Dedezade was nothing but an illusion of a suffering mind. My learned colleague is asking why Muhiddin Eff.'s passport has not been produced or why his absence (at the material time) from Istanbul has not been proved through the Police or other means. It is not possible after the lapse of 22 years to contradict this through the Police; the only evidence disproving it could be Muhiddin's passport; and had this passport been in possession of the first party or if he knew of its whereabouts we should be the last people to forbear from producing it and check the manifestation of justice. Nevertheless, I invite Your Eminence's attention to the fact that this witness was XXnd not only on this point but also whether he was paralytic or not and with regard to the locality of Haji Nouri's shop; and as I have already submitted he has admitted to be paralytic and his untruthfulness as regards the locality of his shop has been established by other witnesses.

To guess whether a witness is truthful or not it is sufficient to have him contradicted on one point only and here he stands contradicted.

Despite this contradiction if Your Court thinks necessary that the passport should be produced and if you, as an officer in charge of the Estate, have information that the passport does exist, you have power under Rules of Court, 1938, rule 7(2) (c) to call evidence at this and at any stage of the proceedings. If there is a passport we shall welcome its production; because Dedezade at the second stage of his evidence clearly said that he had met Muhiddin one or two days after his alleged arrival in Istanbul; and his passport which has been produced shows that he arrived in Istanbul on the 5th October, 1925. I am certain if the passport is traced it will be seen that Muhiddin was not in Istanbul at least on the 6th October, 1925.

Another witness is Nazife Tahir :-

This witness also bases her evidence on an acknowledgement alleged to have been made by Ayshe Hanim Vahbi. First of all this witness is biassed and secondly contradicting her own evidence. She is biassed, because according to her own statement one year after Ayshe Hanim's death Fetti, the son of the 1st Party, accused her of theft and as a result of this accusation the cashmeres alleged to be hers were taken from her and were sold with the estate of the deceased Ayshe Hanim. She

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contradicts herself; because on the one hand she, basing herself on Ayshe Hanim's acknowledgement, alleges that the 2nd party is an 'asaba' relative, while on the other she testifies that after Muhiddin's death Ayshe Hanim had transferred exclusively in her (Ayshe's) name one of the pieces of the immovable properties she inherited from Muhiddin, and that this property was subsequently mortgaged to the witness.

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The fact that Muhiddin's only heiress was Ayshe and her claim to be the only heiress is definitely established by Exhibits M.J. 5 and M.J. 6 produced by L.R. Clerk Jevded who is witness 2 for the 2nd party. From these exhibits I particularly take M.J. 6 as my learned colleague took Exh. M.A. (1) which were issued by the same Mukhtar first Exh. M.J. 6 and later M.A. (1). It was the same Mukhtar who had certified that Muhiddin had no other heirs except Ayshe either within or without Cyprus. 10

I consider it unnecessary to deal with Exh. M.J. 6 which was filed in the L.R.O. for the transfer of property.

Conclusion. Court is faced with two versions of this witness Nazife Tahir.

One that the 2nd party is an 'asaba' relative and this witness alleges to have heard from Ayshe; and the second, that Ayshe considered herself to be the only heiress of Muhiddin and that she had authenticated this in the L.R.O. according to the witness's evidence. 20

I am confident that Court will not believe the alleged acknowledgement evidence of this witness when the Court looks at Ayshe's transaction in question which stands before you; because if the 2nd party is an 'asaba' relative of Ayshe Vehbi then Muhiddin also must have been an 'asaba' relative as well: and in that case Ayshe's share from Muhiddin would have been one half and the other one half would have gone to the other 'asaba' relative

Another witness of the second party is Hatije Abdurezzak.

This witness gave an acknowledgement evidence she had learned by heart; in examination-in-chief, and later in her XXn by me she admitted that Fahreddin's father was Haji Ahmed but could not say how Hji Ahmed and Vehbi were related. At some other point of her evidence this witness wanted to show the 2nd party's grandfather Fahreddin — like Vehbi and Haji Nouri — to be of Nicosia and she denied that he (Fahreddin) was from Lefka and yet she stated that Fahreddin had properties at Lefka and that he fell ill there. 30

To conclude my dealing with the evidence I now take the evidence of the second party himself :—

This witness who came to the witness box after hearing the personal evidence of the first party and what was stated on his behalf, like other witnesses of his could say nothing more than a story of brotherhood based on alleged acknowledgements. He could not give any worthy family or kinship information to Court in connection with Vehbi and Haji Nouri. 40

He does not know if Vehbi and Haji Nouri were nicknamed as "Injizade" or "Injezade" and said he heard it the first time in Court. Whereas this nickname has later appeared also in Sheri Registers Nos.48 and 50 produced in Court as rebutting evidence. This witness does not also know when Haji Nouri, who according to his allegation was his granduncle, died; whereas the Nicosia Nufus Register which was produced later showed that he had died in 1902 when witness was then eleven or twelve years of age. Again he professes not to have seen Ayshe Mulla at all in his life though she, according to his allegation, must have been his grandaunt.

10 He says he only knew Havva Mulla; but he remembers Havva Mulla only because, like the witness Remzi, he was attending her school.

These are the witnesses of the second party produced before the Court to prove Ayshe and Muhiddin's 'asaba' relationship and which I have criticised.

Not a single document was produced before you to prove his 'asaba' relationship as alleged, nor did they produce a Quran of the family or a grave-stone or anything written which are receivable as testimony in pedigree cases.

20 According to the Nufus Book Fahreddin died 73 years ago and long after him Vehbi: yet not a single witness was called to Court to prove their brotherhood on personal knowledge and so the second party has based his claim only on the acknowledgements alleged to have been made by certain dead people. These words (acknowledgements) are hearsay evidence and are admissible in pedigree cases in view of their necessity and therefore such evidence will be regarded poor compared with the personal knowledge and documentary evidence.

30 In a case of inheritance which is regarded as a big one in Cyprus — particularly when people to whom the alleged acknowledgements are attributed are dead, it is not difficult to find witnesses to depose to acknowledgements. In connection with this I draw your attention to what Ex-Chief Justice Sir Nettleton has said. He said in his judgment: "I don't believe a Cypriot's oath". Surely this Court of such a long standing and experience has also heard acknowledgement evidence of this kind. I would invite the Court's attention to another point in connection with the evidence or acknowledgements. According to the Evidence Law for the acceptance as evidence of an acknowledgement alleged to have been made by a dead man depends on a consanguine relationship between the acknowledgor and the person to whom the acknowledgement is made.

40 Some of the witnesses in this case gave evidence basing themselves partly on the acknowledgements made by the 2nd party's father, grandmother and aunts. I allege that such parts of their evidence is not admissible as evidence, as it has not established independently of the claim in this case that they i.e. the father, grandmother and aunts, had any blood-relationship with Vehbi.

I also invite the Court's attention to one more point. The brother-

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hood of Vehbi with Fahreddin was raised the first time after witnesses 1-5 of the second party gave evidence and after my cross-examination of them. Witnesses 1-5 spoke of an unspecified cousinship and brotherhood. Besides these oddities that exist in the second party witnesses there are some facts which clearly contradict the second allegation, for instance:-

(1) According to the evidence, when Haji Nouri died in 1902 his inheritance passed exclusively to Muhiddin Eff., but at the time the second party's father Ahmed Ferid was alive and were he an 'asaba' relation half of the inheritance would have gone to him. The second party could not produce any evidence to rebut this evidence. He only said in his cross-examination: "If you suggest the contrary I say my father did share the inheritance", but this statement of his stands as a mere allegation — as he could not give any further information or particulars about it.

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(2) According to the evidence the second party's paternal aunt Mounteha, i.e. Fahreddin's daughter, went about begging and she went to bed at the Kyrenia gate and yet she did not ask a room from Muhiddin who owned several houses — this is what Remji has stated; whereas had she had any relation with him there was no reason why she would not ask him to procure a quarter for her to live in or why Muhiddin should not call her.

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(3) According to the evidence Muhiddin died in 1937. If, as the second party alleges, he were an 'asaba' of Muhiddin and Ayshe Hanim a halfshare of Muhiddin's inheritance would have passed to the second party. The second party did not put up such a claim at that time; but after the lapse of eight years i.e. after Ayshe Hanim passes away, he brings Action No.41/45 and claims to be Muhiddin's 'asaba'.

The 'asaba' relationship of the second party has been contradicted by the first party witness Hadije Hussein Refe, Mehmed Shefik Ziya and Hafiz Refet. Hadije and Shefik are the grandchildren of Ahmed Muhiddin's and Ayshe Vehbi's aunt i.e. in relationship they are one generation remoter. But apart from this Mehmed Shefik had passed nine years of his youth at Muhiddin's house. As for Hafiz Refet; he was an adopted child of Ayshe Mulla who was a paternal aunt of Ahmed Muhiddin and Ayshe Vehbi, and she lived together in the same house with Ayshe Mulla. These three witnesses know the Vehbi family quite well; they clearly stated that Vehbi had no other brother than Haji Nouri. The second party's witness Hadije Abdurrezzak by admitting Fahreddin's father to be Haji Ahmed, has rebutted the second party's claim to 'asaba' relationship. I allege that this piece of evidence of this woman, who is a witness for the second party, is fatal to the second party. Even if there were no other rebutting evidence to be adduced by the first party, this admission of Hadije in itself constitutes a ground for dismissing the second party's action; however, the first party has produced official documents rebutting the very root of their claim. It is seen from the old Ottoman Nufus Book produced by the Commissioner's Clerk, that the deceased Ahmed Muhiddin's and Ayshe's father Vehbi Eff. was a resident of Abdi Chavush

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quarter, Nicosia and that he lived with all his sisters in that quarter. As Haji Nouri was married at the time, probably he was taken off from this quarter's record. The second party's grandfather Fahreddin's name appears among the nufus record of his father-in-law Hussein Edib in the column giving those 'who have come to reside'; and there it is stated clearly that he had come from Lefka; even his date of arrival from Lefka to Nicosia is shown as 1288 in the 'facts' column. It appears that Fahreddin's family came to Nicosia later than Fahreddin; because the same facts column of the same book gives the date of the second party's father Ahmed Ferid and of his uncle Mehmed (the two sons of Fahreddin) as having come to Nicosia in 1291.

The old Land Registry Book produced by L. R. Clerk Kemal shows that at that time Fahreddin was a landed-proprietor at Lefka. Further, from Sheri Book No. 51 produced by the Evkaf Clerk Ratib it is clear that that Fahreddin's house at Omerye quarter was transferred to him by his father-in-law Hussein Edib after he had moved to Nicosia.

Corollary: Vehbi Eff. and his family were from Nicosia, and that Fahreddin from Lefka. It is noteworthy that the second party with the object of concealing the fact that his grandfather Fahreddin was from Lefka in his cross-examination by me denied that Fahreddin was from Lefka in the same way as he denied Hussein Edip was a Mudir (Sheriff's officer) at Lefka. As a matter of fact in the old Ottoman Nufus Book Hussein Edib's occupation is given as Mudir; second party's witness Muzeyyen Mustafa has, also stated that Hussein Edip was a Mudir at Lefka.

I submit further that as it appears from Sheri Book No. 54 which was produced as rebutting evidence, Haji Nouri Eff.'s dedication was that this house would first pass to himself, then to his wife, then to Vehbi Eff.'s children and when the line extinguishes to a pious person. In this deed of dedication there is no mention of Ferid, of his children or children of his children; but that when Vehbi's generation extinguishes it goes to a stranger. I emphasize Your Eminence, this carries weight especially in a case of pedigree.

Phipson on Evidence 5th Edition p. 295 — Family treatment in pedigree cases. "So family etc."

Therefore the fact that Haji Nouri does not speak of Ferid and his children rebuts the allegation that the 2nd party is an 'asaba'.

I now come to the most important point of the case:— The second party and his witnesses from the start to the finish of his case have alleged that the name of the father of Fahreddin, who is the second party's grandfather, was Osman and that therefore Vehbi and Fahreddin were brothers. The old Ottoman Nufus Book produced by us as rebutting evidence gives the name of Fahreddin's father as Haji Ahmed. Further the Ilam registered in Sheri Book No. 51 gives the name of Fahreddin's father as Haji Ahmed. The fact that these two official documents kept at the time by two different Government offices agree and corroborate each other in this respect, i.e. that the name of Fahreddin's father was Haji Ahmed and not Osman, greatly strengthens the point desired to be

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established by these two records. Further the Ilam given in this register being one pronounced in the presence of Fahreddin personally enhances the weight and strength of the evidence proportionately. Therefore the claim of the second party to the 'asaba' relationship fails especially in the face of these two documents Relying on ~~the~~ ^{HAT/D/S} Abdurrezzak's word, even if you come to the conclusion that there was some sort of relationship between Vahbi and Fahreddin, this relationship would not make him in fact and in law an 'asaba' either of the deceased Muhiddin or Ayshe and consequently entitle him to the inheritance.

If there was any kind of relationship between Vehbi and Fahreddin the relationship is not relevant to the issues in this case even if this relationship was of a foster-brotherhood or maternal brotherhood. In conclusion I submit that these ancient documents produced carry weight as evidence beyond any doubt and the statement made by my learned colleague, I submit with due respect, is wrong. My learned colleagues, alleged that the Ottoman Nufus book was prepared contrary to the provisions of the Nufus Regulations, descriptions and the Census Directions. I allege that these three legislations are not applicable to the Nufus Book produced. The Nufus Book in question was being kept by the Ottoman Government before the British Occupation. The British Occupation took place in 1295 (Hejira), while the Regulation relating to the Registration of Nufus appearing in Supplement 2 to Deustar, p.15 was enacted on 18 Shawal, 1298, i.e. in 1881. Supplement to Deustour Vol.3 p.43 the Regulations relating to the holding of a Census was passed on the same date i.e. 8 Shawal, 1298. Further, at page 54 of the same volume the Special Directions were passed on the 21 Zilhijje, 1298 that is to say all the three legislations having been enacted three years after the British occupation could not apply to the Nufus Book which was prepared before.

At that time, this book was started according to the provisions of Law relating to the General Administration of Provinces appearing in Deustour Vol. 1 p.625, under chapter dealing with the Duties of Officers in charge of Properties and Nufus Registrations, the relevant Article being 31, page 630. Therefore this is an official document showing human Births and Deaths. There does not appear any irregularity in this Book; and as regards the erasures and deletions alleged by my learned colleague there was no such law in force at the time. I would like to deal with the present laws dealing with erasures and deliteons. Best on Evidence 9th Edn. p.213 Sec. 229 "It seems a rule etc....."

Erasures do not vitiate the document unless they are in some material part of it and the interlineations, without anything appearing against them, will be presumed to be at the time of the making of the document. I repeat and say that this Register is subject to the laws of that time i.e. it comes under Article 31 I mentioned a little while ago.

I propose to deal with the points my learned colleague has raised:—

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In the Nufus Register the name of the second party's grandfather is given as Edib Hassan (Hussein) and not Hussein Edib. I allege that it is entered as Hussein Edib and not Edib Hussein; but as the Ottoman custom was, the word "Edib" was written above the word "Hussein" therefore "Edib" is not a name but surname. As the Ottomans considered surname as adjectives sometimes they used them before the names as they used to do with the family names at that time. For instance Prime Minister Fadil Ahmed Pasha, the son of Prime Minister Koprulu Mehmed Pasha, is known as Fadil Ahmed and not Ahmed Fadil. Another custom the Ottomans had was to regard the rule of penmanship and thus sometimes transpose the words. For instance the words of the Quran which read as "Hasbiyallahu Vahdeh", on one of the colossal pillars of St. Sophia Mosque are written to read as "Allahu Hassbi Vahdeh". This rule of penmanship is particularly seen applied in cases where the space is too small for writing and on seals. At this moment I have in my possession a Book kept by the Evkaf Office for accounts at the Ottoman times; it is dated 29 Shaban 1293. In this book we see amongst others the seals of the then Governor of Cyprus Raif, of the then Mufti of Cyprus Raji and the then Archbishop Sophronios. On two other seals appearing in this Book we see that the surnames were written above the names. The seal of the Cashier reads as Refet Hussein instead of Hussein refet and also the seal of the late accountant of the Evkaf Office instead of Hussein Edip reads as Edip Hussein and this man being the grandfather of the second party, I cite it as authority.

Essad Eff: I object to my learned colleague's statement as to how the names were formerly being written as this was not established by evidence.

Fadil Eff. My learned colleague has raised an objection to the name of Hussein Edib's father that it was first entered in the register as Abdullah and that subsequently it was erased and made Mustafa. Up to that time erasures were not prohibited. It appears the Registrar of Nufus had first put it down as Abdullah and then corrected it. This is not an irregularity but an act of accuracy, let alone the fact that Register No. 51 gives his name as "Mustafa".

My learned colleague has alleged also another irregularity that Hussein Edib's wife was shown as Saime while Saime was a neighbour. Who can deny that Hussein Edib was first married with Saime and later he divorced her or that by a coincidence his wife's name was Saime as that of his neighbour? The witnesses of the second party accept that Hussein Edib's second wife was Kirlizade Havva Kadin; but neither the second party himself nor the witnesses could say what the name of Hussein Edib's first wife was. Therefore the name "Saime" entered in the Nufus Book stands before you unrefuted. My learned colleague finds peculiar also the date of Hussein Edib's marriage with Saime. In my opinion there is no peculiarity in it at all. First of all, according to the provisions of guardianship which are still in force in this country, minors can marry through their guardians.

I cite from a Book on Marriage by Mahmoud Essad case No. 103.

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Nimet-i-Islam page 50. Other books on Moslem jurisprudence agree on this point. Therefore there is no peculiarity in Hussein Edib's marriage at the age of twelve or thirteen. Things must be viewed not in the light of present conditions but in the light of the conditions that prevailed in the past. At that time of the Ottomans there was Military Service and married people without any support were being exempted from Military Service and those who wanted to rid their children from Military Service knew how to avail themselves of these provisions of the Sheri Law.

I refer to Nufus Register of Omerye Quarter entry No. 3865. You will see that Mehmed Ali son of Salih married Fatma daughter of Osman. This man was twelve years of age and married his wife who was then twenty-three. The objection raised to this Book referred to the column where Hussein Edib entered and not to the entry re Fahreddin because no objection could be raised to the latter. If the objection to this Book is that the Hussein Edib in question is not the Hussein Edib there entered this is a vain effort; because opposite the entry of Hussein Edib his son-in-law is shown to be Fahreddin and his son i.e. the father of the second party appears to be Ahmed Ferid and his other son, Muhammed — they appear at the same entry.

My learned colleague referred you to Deustour Vol. 4 p.79, articles 7, 9 and 10. I submit with due respect, that my learned colleague has erred in this; as these Regulations were enacted on 4th Jemazievvel, 1296 i.e. one year after the British Occupation. He has erred in another point. Even if Art.3 was applicable it would not cover the Ilams as Ilams are covered by article 15. The Registers of that time came under Article 1738 of the Mejelle. According to this article these registers hold good unless it is established that they are not free from suspicion and fabrication. My learned colleague has also pointed out that these registers were not sealed and signed. This article of the Mejelle and art. 15 of the Regulations I referred to before do not require them to be signed and sealed. If we want to know something about signing and sealing we must look up Mejelle Art. 1736. The law then in force clashed with the one now in force. These Books put in as Exhibits also prove that the law then in force was the one which did not require any sealing or signature.

To conclude, my learned colleague has alleged that the Sheri Registers were not in proper custody. This is out of the question as these Registers were kept under art. 1738 of the Mejelle by the Cadi of Cyprus until the abolition of his post and after that, as it is known, are kept by the Evkaf Office which succeeded all that belonged to the Cadi.

I cite Phipson on Evidence, p.497.

"The proper custody of a document etc...". Delivery to a person who naturally and reasonably ought to be in possession of a document is considered to be a proper custody.

In conclusion I say of both the Ottoman Nufus Register and the Sheri Register, not only are they official documents kept under the pro-

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visions of the then operating laws, but they are also ancient documents and as such carry a particular value.

In view of all these submissions made by me I ask for judgment as per claim in action No. 14/45 and costs.

Court :

Adjourned sine die for the Court to study and deliver judgment.

(Sgd) A. BURHANEDDIN,

Sheri Judge.

4.6.1949.

*In the
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No. 46

JUDGMENT of Sheri Court

M. Fuad and Essad Eff. for the second party.

Fadil Niazi Korkut Eff. for the first party.

JUDGMENT

The Court having considered the evidence adduced and the legal and Sheri value of the Exhibits put in by the parties in this consolidated action, gives judgment as per claim of the first party in action No. 14/45 i.e. that Mehmed Atta Ali Ismet, Pembe Ali Ismet, Mustafa Mukhtar Ali Ismet and Gioulshen Hafiz Mustafa are the exclusive heirs of the deceased Ayshe

20 Vehbi of Nicosia.

(Sgd) A. BURHANEDDIN,

Sheri Judge.

Nicosia, 30.10.1950

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Judgment
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30th October
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In the
Supreme
Court of
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Appeal
from
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Court
7th November,
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No. 47

IN THE SUPREME COURT OF CYPRUS

APPEAL from Decision of Sheri Court — Grounds of Appeal

Sheri Appeal No. 55

Actions Nos. 14/45 & 41/45

IN THE SUPREME COURT OF CYPRUS.

In the Sheri Tribunal of Nicosia—Kyrenia.
Sitting in Nicosia.

Between :

Hussein Raji Ahmed Ferid, of Nicosia, Plaintiff-Appellant,

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and

Mehmed Ata Ali Ismet, of Nicosia, Defendant-Respondent,

and

Mehmed Ata Ali Ismet, of Nicosia, Plaintiff-Respondent,

and

Pembe Ali Ismet, of Nicosia, Defendant-Respondent.

Grounds of Appeal :— 1. Sheri Court was wrong in accepting the following as evidence :-

(a) The Nufus Book of Omerye Quarter, page 103

(b) It is clear from Register No.51, called the Register of Ilams, p.112 that it is neither signed nor sealed by the cadı, and it can be clearly seen also that the names of the witnesses therein appearing were not signed by the witnesses themselves but written down by the person who entered the Ilam.

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2. Sheri Court was misled by the said inadmissible documents in arriving at the conclusion that the appellant was not an "asaba" heir of the deceased Ayshe Vehbi.

3. It has been established by the evidence adduced by appellant that Fahreddin Osman, the grandfather of the appellant, was Vehbi Osman's brother and that this Vehbi was the father of the deceased Ayshe Vehbi and therefore that appellant is entitled to be the exclusive heir of the estate of the deceased, and respondents being relatives of the deceased on the maternal side, they cannot be heirs.

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(Sd) Paschalis & Clerides.

(Sgd) M. Fuad.

(Sgd) A. Essad.

Nicosia, 7.11.1950

Filed on 8.12.1950

No. 48
ARGUMENTS ON APPEAL

*In the
Supreme
Court of
Cyprus*

Sheri Appeal No. 55

16th July, 1951

In the Supreme Court of Cyprus.

Between:

Mehmet Ata Ali Ismet, of Nicosia,

Plaintiff

and

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Pembe Ali Ismet, of Nicosia

Appellant

and

Hussein Raji Ahmet Ferid, of Nicosia

(Plff - Appellant)

and

Mehmet Ata Ali Ismet, of Nicosia

(Respondent)

Appeal by Plaintiff from the Judgment of the Sheri Court of Nicosia dated the 30th October, 1950, in Actions No. 14/45 and 41/45.

20 Coram: Sir Edward St. J. Jackson, C. J. & Melissas J.
(Shorthand note of the proceedings ordered to be taken.)

For Appellant: Mr. Clerides with Essad Bey.

For Respondent: Mr. G. N. Chryssafinis, K.C. with Mr. Fadil Korkut.

30 **Mr. Clerides:** May it please Your Lordships: This is an appeal from the judgment of the Sheri Court of Nicosia and Kyrenia on two consolidated actions in the judgment dated 30th October, 1950. The first action, under No. 14/45 was brought by respondent, Mehmet Ata Ali Ismet, as the heir of the deceased Ayshe Vehbi against his sister, Pembe Ali Ismet of Nicosia as heir of the said deceased, claiming a declaration that the estate of the deceased devolved exclusively to the parties and to Mustafa Ali their brother, and upon Gulshen Hafiz Mustafa, a cousin of the parties in that action. The second action is No. 41/45 and was instituted by Hussein Raji Ahmed Ferid against respondent, Mehmet Ata Ali Ismet, claiming an Order from the Court declaring that the estate of Ahmed Muhiddin and of his sister Ayshe Vehbi devolved exclusively upon him as the nearest as a blood relation.

40 Now, in so far as the Sheri Law regulates this present case, 'asaba' relations, that is the relations on the paternal side, if they exist they exclude relations of the same degree on the maternal side. The relations on the paternal side are called 'asaba' and the relations on the maternal side are called 'zevilerham' heirs.

*In the
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Arguments
on Appeal
16th July,
1951.
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Chief Justice: Have you got a family tree?

Mr. Clerides: Yes, I have prepared one, my Lords, and I have put the relationship of the respondents in red and the relationship of the Plaintiff in black. I have given one to my learned friend.

Chief Justice: This is undisputed, is it?

Mr. Chryssafinis KC: We prepared a different one, a simpler one.

Chief Justice: Have you got one Mr. Chryssafinis?

Mr. Chryssafinis, KC: I will just give him one, they are a set, more simple. What one need prove.

(Mr. Chryssafinis, KC. hands copy of family tree to Court.)

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Chief Justice: (To Mr. Clerides). Is it convenient for you at this point to explain yours?

Mr. Clerides: Yes my Lord, I will explain.

Chief Justice: First of all, how much is there involved in this estate, is it a large estate or small one.

Mr. Clerides: As a matter of fact I do not know.

Mr. Chryssafinis KC: We think well over £10,000.

Melissas J: It is £8,000 to £10,000 in the record.

Mr. Chryssafinis KC: More, because properties have gone up in value.

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Mr. Clerides: Now, on the right hand side of the tree I prepared Your Lordships will see at the top the name of Moustafa Mukhtar Imam of Tahtakala.

Chief Justice: What is the particular distinction between red and black?

Mr. Clerides: Red is the relationship of the respondents and black is the relationship of the appellant.

Now, I will start first from the tree of the respondents. At the top Your Lordships will see Moustafa Mukhtar Imam of Tahtakala and Aishe Hanum. They are husband and wife. Now they had five children. The first is Fatma, then Hattidje, Attaoula, Yousouf Zia and Ali Ismet. Ali Ismet is the father of respondent. And the children of Ali Ismet are again five: Munnibe, Ahmet Tahib, Mustafa Mukhtar, Pembe and Mehmet Atta. Mehmet Atta is the respondent. Number 4, Pembe, his sister is living and Mustafa Mukhtar is the brother of the respondent living, in whose favour judgment was given, and then there is another child too.

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Chief Justice: This particular respondent, Mehmet Atta, is he the plaintiff in the earlier action?

Mr. Clerides: Yes. the plaintiff in action No. 14/45.

And then your Lordships will see further as the sixth child of

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Mustafa Mukhtar, Pembe Hanum, just at the very right hand. Pembe Hanum who had three children: Zehra, Ahmet Fethi and Gioulsoun. Only Gioulsoun was living at the material time. So the persons.....

Chief Justice: The others are dead, are they?

Mr. Clerides: The others are dead.

Gioulsoun also is one of the persons in whose favour a judgment was given. So there are four, Mehmet Atta, Pembe, Mehmet Mukhtar, and Gioulsoun.

10 **Mr. Chryssafinis KC:** To avoid confusion, the name of Gioulsoun in the judgment of the learned Trial Judge is given as Gioulshen at page 88 of the notes.

Chief Justice: These names appear differently almost every time they are written.

Mr. Clerides: It must be this person.

We are going back to Fatma, right at the top. Now, Fatma's husband was Vehbi Effendi. Fatma is the first child of Moustafa Mukhtar as it appears in the tree. Now, her husband was Vehbi Effendi and they had two children, Ahmet Muheddin and Aishe Vehbi, whose names are in capitals in the middle. These are the two deceased whose estate is claimed.

20 Now, as Your Lordships see, the relationship of respondent to the deceased is clearly on the mother's side. And that is not disputed.

Now, coming... ..

Chief Justice: Just a moment before we pass on. I think you said that you did not dispute this? (Addressing Mr. Chryssafinis).

Mr. Chryssafinis KC: No, my Lords, but there too many names.

Chief Justice: Yes. It is not incorrect, is it?

Mr. Chryssafinis KC: Up to the present we do not dispute anything but on the other side typed in black, we shall dispute a few things, of course.

30 **Chief Justice:** Yes, Mr. Clerides? You said that the respondent's relationship to the deceased was on the mother's side.

Mr. Clerides: The mother's side, and we do not dispute this relationship.

Now, coming to the relationship of the appellant, we start from Fatma whose husband was Vehbi Effendi. Now, Vehbi Eff. was the son of Osman on the top. I put in red "Haji Ahmet" because the main dispute is whether the father of Fahreddin was Osman or Haji Ahmet.

Melissas J: What was the accepted surname of Osman? What was it?

40 **Mr. Clerides:** Well, it is Osman. They would not be able to say a surname, but it appears in some records that this surname was Inkirzade.

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Chief Justice: Is it correct to talk of a surname in those days? What is the date, if you can give it, of Osman's death?

Mr. Clerides: Nobody knows, it must be very very long ago, because the others died some 70, some 45, some 50 years ago, so Osman must have died very long ago.

Chief Justice: That is to say, the deceased whose estate is in dispute, when did they die?

Mr. Clerides: One in 1937 and the other in 1945. Ahmet Muheddin died in 1937 and Ayshe Vehbi in April, 1945.

Chief Justice: Why is the estate spoken of as the estate of both of them? 10

Mr. Clerides: When Ahmet Muheddin died half of his property would devolve upon his sister, upon Ayshe Vehbi, and the other half, had appellant been in Cyprus or known of the death, the appellant would have been entitled to the other half, but he came to know

Chief Justice: I will just make a note of this. I have got that half went to his sister Ayshe.

Mr. Chryssafinis KC: No, the whole went to his sister.

Chief Justice: Apparently it went in halves.

Mr. Chryssafinis: No, my Lord, that is the main point in dispute. 20

Chief Justice: Ah, all right.

Mr. Clerides: I will explain. I am explaining how it is that appellant is claiming the estate of Ahmet Muheddin as well.

Chief Justice: Will you go on so that I can get it clear? Then we shall see what is in dispute, because I understand you to say that according to the law governing the case half the estate of Ahmet Muheddin would go, and did go, to his sister Ayshe, is that right?

Mr. Clerides: Yes my Lord.

Chief Justice: As far as it goes.

Mr. Clerides: Yes, and half should go again to appellant. 30

Melissas J: If he was in Cyprus or knew of his death.

Mr. Clerides: If he was in Cyprus or knew of his death, but on the death of Ahmet Muheddin a certificate was issued by the mukhtar that there was no other heir besides Ayshe, and so one of the houses was transferred in the name of Ayshe but the other property remained in the name of Muheddin.

Chief Justice: Does the property consist of two houses?

Mr. Clerides: Houses and Shops.

Chief Justice: So when you say "one house" do you mean some particular house or half the estate?

Mr. Clerides: No one house, not half the estate. The house in which they were living. And the other property remained and is still in the name of Muheddin. I think I am right in that.

Mr. Korkut: It was now transferred, after the judgment.

Mr. Clerides: Very good. The parents of Ahmet Muheddin and Ayshe Vehbi are Vehbi Effendi and Fatma. Their names are in capitals in the middle sheet.

10 **Chief Justice:** These being the persons whose estate is in dispute?

Mr. Clerides: Yes, my Lord.

Chief Justice: The parents being, you told us ?

Mr. Clerides: Vehbi Effendi and Fatma. Now, Vehbi Effendi is the son of Osman. Also Haji Nouri was a son, under No. 1 black, under the name of Fatma. And there is a line drawn towards Osman. So, the children of Osman were: Haji Nouri, one, Vehbi Effendi, two, Sherife Mulla, three, Aishe Mulla, four, Havva Mulla, five, and Fahreddin, six.

Now, the dispute is whether Fahreddin, No. 6, is the son of Osman.

20 **Chief Justice:** Is this how you usually draw a family tree? I mean is it the practice in Cyprus?

Mr. Clerides: No. As there was a complication in this case, two brothers married to two sisters, I had to make this arrangement in order to make it all on one sheet.

Now, the appellant alleges that Fahreddin was the son of Osman and brother of Vehbi Effendi.

Mr. Chryssafinis KC: My Lords, I think it might help considerably if I just say a few words, because all these names are unnecessary, it is only one name. All these names are absolutely complicating the issue, it is one short question in this case.

30 **Chief Justice:** Unless he agrees with that I cannot interrupt his address.

Mr. Clerides: I had to take all this from the evidence as it was put before the Court. I am coming to the short point after explaining the plan.

As I said, my Lords, the appellant alleges that Fahreddin was the son of Osman. The respondent alleges that Fahreddin was the son of Haji Ahmet.

Chief Justice: Two different people?

Mr. Clerides: Two different people.

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Chief Justice: That seems something that we shall have to take notice of.

Mr. Chryssafinis KC: Yes, if they prove just one short point, they say Osman had three sons, we say he had two sons, not another child. No names. That is all the point. All this tree is absolutely useless. In three lines: We say that a certain Osman who died round 1850 had two sons Vehbi and Haji Nouri Osman. Both parties agree as to that, but they themselves add another son called Fahreddin Osman. We say no, he had no other son called Fahreddin Osman but another, a stranger, lived in those days called Fahreddin Haji Ahmet. That is all, nothing else. If they prove that Osman had a son called Fahreddin who was the grandfather of the appellant they win their case, if they do not prove that Fahreddin Osman existed then they lose their case, and if we prove ours, that a certain Fahreddin Haji Ahmet existed, in that case again they lose their appeal. All these daughters are absolutely unnecessary, each of them had 30 children. There is one short issue: Was Fahreddin at any time in existence and was he the son of Osman that is all. All these ladies may have been quite interesting in those days, but they have nothing to do with this appeal. I spent about a fortnight eliminating thousands of names and I cannot understand why they were put in at all.

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Mr. Clerides: I agree with my learned friend that the whole issue in this case is if Fahreddin was the son of Osman and brother of Vehbi, as we allege, or whether Fahreddin was a stranger. That is the whole issue. But I do not agree with my learned friend that all the other names are unnecessary because they are given in evidence by witnesses of both parties, and it will show the relationship, as Your Lordships will see, that the wife of Fahreddin was Zuriye, who is the daughter of Hussein Edip Kioutahi and of Havva Hanoum Kirlizade.

Mr. Chryssafinis KC: No step-mother.

Mr. Clerides: Hussein Edip Kioutahi married two wives, one Zehra and one Havva Hanum Kirlizade.

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Mr. Korkut: And one Saime.

Mr. Clerides: There is no evidence that he had a wife Saime. There was another brother of Zuriye, Moustafa.

Chief Justice: Do we have to bother about him?

Mr. Clerides: No, but he is referred to by one witness.

Chief Justice: Yes, but witnesses say a good deal that it is not necessary to listen to.

Mr. Clerides: By a daughter of Moustafa who knew the family. I put that name there because a daughter of Moustafa is giving evidence and refers to the family.

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Chief Justice: Who were Zuriye's parents?

Mr. Clerides: Hussein Edip Kioutahi.

Chief Justice: Father, Mother? It might be one of two according to this plan.

Mr. Clerides: Yes, but as far as I can remember from the evidence, Zuriye is the daughter of Havva Hanum. Anyhow, that may be checked.

Mr. Chryssafinis KC: No, because unfortunately this gentleman married three wives, not two according to the record.

Chief Justice: But it doesn't matter very much, does it ?

10 **Mr. Chryssafinis, KC:** Nothing at all.

Chief Justice: Zuriye married Fahreddin, anyway?

Mr. Clerides: Yes.

Chief Justice: And from that marriage descends the appellant?

Mr. Chryssafinis, KC: They say.

Chief Justice: Well, that is what they say. Do you dispute him on both sides — Fahreddin — both his children and his parents?

20 **Mr. Chryssafinis, KC:** No, the only thing we dispute is that his grandfather was Haji Ahmet and not Osman. The grandfather of the Appellant was Fahreddin Haji Ahmet and not Osman. We have got evidence.

Mr. Clerides: One of the children of Zuriye is Ahmed Farid, No. 5, and one of the children of Ahmed Farid is Houssein Radji who is the present appellant.

Mr. Chryssafinis, KC: My Lords, could we not agree with my learned friend that if Hussein Raji Ahmet Ferid is the grandson of Fahreddin Osman then he is entitled to this estate, if though Haji Ahmet is the father of Fahreddin he has no claim whatsoever? It would save two or three days.

30 **Mr. Clerides:** I am coming to that point, I am saying that this is the whole point.

Mr. Chryssafinis, KC: Let us agree about this.

Mr. Clerides: It is not necessary to agree, you have no. . . .

Chief Justice: Well, will you put what you think is the point in your words?

Mr. Clerides: The point is whether Fahreddin is the son of Osman and brother of Vehbi, No. 2.

Chief Justice: The son of Osman by what mother, do we know?

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Mr. Clerides: We do not know, nobody seems to know the mother of Osman.

Mr. Melissas: The wife?

Mr. Clerides: The wife of Osman.

Chief Justice: The son of Osman and the brother of Vehbi — well Vehbi is a son of Osman, there is no dispute about that?

Mr. Clerides: and **Mr. Chryssafinis, KC:** No.

Chief Justice: Need we go further than to see whether Fahreddin is the son of Osman? If he is it follows that he is the brother of Vehbi, so all we need see is, is he the son of Osman. 10

Mr. Clerides: Yes, and therefore brother of Vehbi.

Chief Justice: Yes, but that follows because it is not disputed that Vehbi is the son of Osman, so the dispute is past Fahreddin. Is there any dispute below Fahreddin?

Mr. Clerides: No, no dispute at all.

Chief Justice: Then if he is the son of Osman he is a male relative of the deceased, on the male side.

Mr. Clerides: On the paternal side.

Mr. Chryssafinis, KC: Subject to a short qualification. If he is the son of Osman and the full brother of Vehbi Osman, because he may be the son of Osman from a different wife, in which case all the question changes. 20

Chief Justice: Oh, so that there are two points, first whether he is the son of Osman, if he is is he a son by the same mother.

Mr. Korkut: If Vehbi and Fahreddin are proved to be brothers from the mother's side they are not asaba.

Chief Justice: One moment, I want to get this clear. If Fahreddin is the son of Osman that does not finish the matter?

Mr. Chryssafinis KC: It does. I am sorry, I apologize.

Chief Justice: Because just a moment ago it sounded as if it didn't if they have different mothers. It does not matter according to your Law? 30

Mr. Korkut: No.

Chief Justice: All right, if Fahreddin is the son of Osman he is the brother of Vehbi.

Mr. Chryssafinis, KC: And Haji Nouri Osman.

Mr. Melissas J: That makes no difference.

Mr. Korkut: It does, because there is something to do with the

estate of Haji Nouri when he died.

Chief Justice: All right, that at any rate is the main question?

Mr. Clerides: Yes that is the main question.

Chief Justice: Now then, we don't want to get further from that than is really necessary. do we?

Mr. Clerides: No, my Lord.

Chief Justice: Now, what gives rise to the doubt whether he is the son of Osman or not?

Mr. Clerides: I will explain to your Lordships how the position is.
 10 After the conclusion of the hearing of the two consolidated actions before the Sheri Court the respondent applied for leave to call rebutting evidence, and leave was refused and the case came before this Court and the Court directed that rebutting evidence should be heard. Now, at the hearing of the case for rebutting evidence certain documents were produced.

Chief Justice: This is in what action?

Mr. Clerides: In the consolidated action 14 and 41 of 45, after the closing of the hearing the respondents applied for leave to call rebutting evidence, the leave was refused by the trial Court and the case came on appeal, and the Court directed that rebutting evidence should be allowed
 20 to be adduced and it was adduced.

Melissas: Before the trial Court?

Mr. Clerides: Before the trial Court. Now, the rebutting evidence adduced. . . .

Chief Justice: To rebut what?

Mr. Clerides: To rebut the allegation of the appellant that he was an asaba relation.

Chief Justice: Yes but that he was an asaba relation because his father was Osman or what?

Mr. Clerides: Because the appellant was the grandson of Fahreddin
 30 the son of Osman, and they wanted to prove that Fahreddin was not the son of Osman but the son of one Hadji Ahmet.

Chief Justice: Same point as we have got now?

Mr. Clerides: Yes.

Chief Justice: All right.

Mr. Clerides: Now the respondent's rebutting evidence — the main rebutting evidence was the Nufus Book for Omeriye Quarter, Nicosia. An objection was raised against the admissibility of that book, of the Nufus book, as evidence in this case. The objection was overruled.

Chief Justice: Why was it objected to?

Mr. Clerides: Because the book was not prepared in accordance
 40 with the law, and so on. The objection was overruled and the book was admitted. There is a ground of appeal — one of the grounds of appeal in this case — but in view of the decision of this Court in the case of *Houriye Moustafa v. Ahmet Ramadan* (C.L.R. V. XVII, p.33) I will not

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argue that this evidence was inadmissible. I will only submit that the Nufus Book is only prima facie evidence of its contents. This is a Nufus Book.

Chief Justice: I see the Head Note says that very strong evidence would be required to contradict the entries in that.

Mr. Clerides: Yes, my Lord, but of course I will have something to say about that later.

Chief Justice: You want to water that down a bit, do you?

Mr. Clerides: Yes, because in the same case I will point out to your Lordships that there were two Nufus books produced and they were both admitted, the one was relied upon and the other one was not relied upon at all. 10

Chief Justice: Anyhow, it is not conclusive you say?

Mr. Clerides: It is not conclusive. This Nufus Book was made under a law on the registration of census and properties.

Chief Justice: Date? I mean Turkish times.

Mr. Clerides: The Turkish times, they give the date at the end, 1277.

Chief Justice: It is not sufficient for me, I am afraid, there must be a corresponding English date, isn't there?

Mr. Korkut: The date is 1297. 20

Mr. Clerides: 1277. The reference made by my friend in the Court below was wrong, but there is a special law for preparing the Nufus Book to which no reference was made in the Court below.

Chief Justice: 1291, in this case you referred us to, was 1874. You know, this case in the Law Reports, you see in the head note.

Mr. Clerides: Anyhow, the law I have here — and it is given in Ongley's Land Code, page 111, that law provided that for each town six clerks were to be appointed and their duty was to make a record of all houses in each street, to place a number on each house and then to make a record of all the persons resident in that house, male and female, their date of birth, if they arrived from any other place, the place from which each person arrived. 30

Chief Justice: What do you mean, the place from where he arrived?

Mr. Clerides: For instance, if he was resident in Nicosia and came from Lefka or any other place to tell that.

Chief Justice: I do not know how important that is, it may not be important in this case.

Mr. Clerides: It may.

Melissas J.: It is the same in the present census.

Chief Justice: Do you mean that he says he is resident there or that he is temporarily there but resident somewhere else? 40

Mr. Clerides: Well, even if he is a permanent resident there it should be stated from where he came, the property he has, his occupation and his income. This Nufus Book was serving a double purpose, first of all to know the people who were liable to military service and then for the purposes of taxation. Now the Nufus Book in the way it was directed by law to be prepared, it was a matter of making a record from information received, which may at the time this information was collected, have been correct or incorrect.

10 Now, after this preliminary, I should like to draw your attention to the entry in the Nufus Book which refers to this case.

Melissas J.: To Fahreddin?

Mr. Clerides: Yes, where the name of Fahreddin is mentioned. it is at page 103 of the Nufus book.

Chief Justice: Can we get that?

Mr. Clerides: Unfortunately it is in Turkish and has not been translated.

Melissas J.: But we shall see if there are any corrections.

Mr. Clerides: There are some corrections, but that is not the point.

Chief Justice: If it is important we shall have to get it translated.

20 **Mr. Clerides:** It is most important for the case.

Chief Justice: Then it ought to be translated.

Mr. Clerides: Unfortunately, on account of the Assizes in Famagusta I started reading the case only on Saturday and there was no time for me.

Chief Justice: Well, can you get a translation?

Mr. Clerides: I will.

Chief Justice: I mean, we will help you in the Registry. Do you want now to go into details of that?

Mr. Clerides: Yes, it is necessary.

30 **Chief Justice:** I mean at this moment, or later or what?

Mr. Clerides: I should like it now.

Chief Justice: Well, can we send for someone?

(Interpreter from the Registry sent for.)

Chief Justice: Turn it up.

(Essad Bey looks at record)

Chief Justice: Do you mind, Mr. Essad, telling us what this is and we will get it translated afterwards. It is no use my looking at that

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page, no matter how long I look at it. Mr. Essad, will you read that page? Has the page got a number?

Mr. Clerides: Page 103.

Chief Justice: What is the date of the book?

Mr. Clerides: It has not got any date, and no seal, nothing at all.

Mr. Chryssafinis KC: It is kept from day to day.

Chief Justice: Is there a date of entry?

Mr. Clerides: No date of entry. The original was made when the census took place but then dates and so on were reported later.

Chief Justice: I suppose the book covers a certain period. Do we know what that is? 10

Mr. Clerides: It has no date whatsoever, it has no date when it was prepared, anywhere.

Mr. Chryssafinis KC: It records here when somebody died, and so one may say that a certain bit was done at a certain date.

Mr. Clerides: These are recorded from certain other books.

Melissas J.: With dates?

Mr. Clerides: With dates, but when this book started it was a record of all houses and of all residents, of all persons in each house.

Chief Justice: Yes, but there must be a date of entry in a book, if you take the first entry, whatever that is. Get Mr. Essad to look at the first entry and say what is the date of that. 20

Mr. Clerides: No date.

Mr. Korkut: ^{THE BIRTH OF} The date of the first name is given, 1218. 1218 is the date of birth of the person.

Melissas J.: 1801 is the corresponding English date.

Mr. Clerides: Yes, but at that time the Nufus Book was not prepared, it was prepared later. The date is the date the man was born. For instance if they came to my house and wrote down my name and the date when I was born. . . . 30

Melissas J.: It may be 10 or 12 years later.

Mr. Clerides: It may be 100 years, if I was 100 when they came to my house and I said I was 100 years old they would put down the date of my birth.

Mr. Chryssafinis KC: From what I remember, in this particular entry the exact date when a certain person came from Lefka is given in that book.

Chief Justice: Well then, what is the exact date of the entry in this page?

Mr. Clerides: Now, there are horizontal columns and in each column

Chief Justice: What are the columns first?

Mr. Clerides: The first is a serial number of the house. The next column the family number.

Chief Justice: What is a family number?

Mr. Clerides: That is how they describe it.

10 **Melissas J.:** The number of persons in the family?

Mr. Clerides: No. And then it has the name of the person who is in the house.

Chief Justice: The head of the family, or what is it?

Mr. Clerides: Supposed to be the head of the family. Now, in that column, what is written there is Edip Hussein, son of Abdullah, the word "Abdu" is struck off with a line and under it the word "Moustafa Agha".

Chief Justice: Is there any dispute about this? Because otherwise we can have somebody who can read it.

Mr. Chryssafinis: No, my Lord.

20 **Chief Justice:** I mean, we have got somebody else here now who can translate it.

Mr. Clerides: There will be a dispute in a few minutes and we will want an interpreter.

Chief Justice: Very well, you have got this entry, the name of the head of the family, and you have told us what it was.

Mr. Clerides: Yes, and then, next to that column and against the name of Edip Hussein. . .

Chief Justice: Is that the fourth column? I am numbering them 1, 2, 3, 4.

30 **Mr. Clerides:** Well, there are several columns, my Lords, in some columns there is nothing, so if I refer to the 1st, 2nd, 3rd, 4th. . . . There are about 50 columns, 20 columns.

Chief Justice: So it is the first in which there is any entry, beginning from the left, I suppose?

Mr. Clerides: Yes. Under the heading of 'males' there is nothing against this name. And next there is a column for families, and there is no entry in that at all. Then comes the number of the house, which is 14. Then comes the column "Street" and there is no entry in that. Then

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comes a column "Date of Birth" and it gives the date 1228.

Melissas J.: 1811.

Chief Justice: Just the year, or what?

Mr. Clerides: Yes, Hegira. Then comes the date of marriage which is given 1240. 12 years old. Then comes "Occupation" and he is described as Mudir.

Chief Justice: Which means what?

Mr. Clerides: Sherif.

Then there is another column which is empty, and then follows the column of Books where the properties are registered and it gives some numbers there. Then there are some columns empty and then we come to the column "Persons who came for settlement" — to reside in that house. Now, in a sub-heading, — there are several sub-headings — and after that it says: "Date of arrival", and gives as date of arrival 1288.

10

Melissas J.: 1871 that will be.

Chief Justice: And whose arrival is that the date of?

Mr. Clerides: Then it gives the name.

Melissas J.: That would be the arrival of Edip Hussein?

Mr. Clerides: Well, it is against the name of Edip Hussein, but next to that date of arrival there is a name which is Muhettin Hj Ahmet.

20

Mr. Chryssafinis KC: Of course with that we differ, we say that it is Fahrettin Hj Ahmet which is written down.

Mr. Clerides: We say that as it is written there it reads Muhettin Haji Ahmet, not Fahrettin.

Chief Justice: (To Mr. Chryssafinis KC) You dispute that, do you?

Mr. Chryssafinis: Yes, we say that what is there is Fahreddin Haji Ahmet. The Counsel in the court below was Fuad Bey.

Chief Justice: Well, we had better get somebody to read that.

Moustafa Loutfi Sworn.

Chief Justice: And what are you? A. Clerk, District Court, Nicosia. Q. What did you say, what oath did you swear? A. I took the oath I am going to tell the truth. Q. Not the interpreters' oath?

30

(Moustafa Loutfi takes the interpreter's oath).

Chief Justice:... To interpret what?

(Mr. Clerides helps interpreter to take the oath)

Moustafa Loutfi: I will read and interpret correctly from Arabic into English.

Chief Justice: Now, will you show him what you want him to translate?

Mr. Clerides: (To interpreter) Will you read this here, this name, here? A. In Arabic letters there are dots, there are no dots in this word, whatsoever. Q. As there are no dots, how will you read it? A. I will read it "Mehreddin". Q. Or "Mouhettin"?

Chief Justice: Spell it. A. "M e h r e d d i n". Son of Haji Ahmet.

Mr. Clerides: And then next to it, what is this column? A. Date of Birth, 1246. Lefka 1246 (1830)

10 Chief Justice: What does it appear from the book, that that is the date of whose birth? A. It is on the same line as the name I told Your Lordships before, Mehreddin. Q. You read it as the date of birth of Mehreddin, son of Haji Ahmet? Can you give that date in English? A. No. I cannot.

Chief Justice (To Mr. Clerides): Do you agree with that 1830?

Mr. Clerides: Mr Essad makes it 1827.

Q. Now, next to that entry here what is this heading, this column? A. "From where he came". Q. And what does it state under the heading "From where he came"? A. "Lefka".

20 Chief Justice: That is down twice, is it? A. Yes, born at Lefka and he came from Lefka.

Mr. Clerides: Then, next, what column is it? A. It refers to death. Q. And it gives some numbers and then date of death? A. 1293 (1876).

Chief Justice: And does that appear to be the date of the death of this person? A. Yes, it is.

Mr. Clerides: No, it speaks later, it gives the date of the death of the person, the name of the person is given. It is Fahreddin now, it gives Fahreddin.

30 Chief Justice: He is giving evidence on oath, can you ask him the question so that he can tell us?

Mr. Clerides: Very well. Q. What is next to the date of the death? A. There is a number, 3572. Q. Which is what? A. The general number in the original book. The entry in the original book.

Chief Justice: What do you understand from the "original book?" A. It is the original book.

Mr. Korkut: Very probably the number of the Nufus Book of Lefka.

Chief Justice: Yes, but he is supposed to be giving evidence. I do not know how many people are giving evidence. Q. What do you, Mr. **40** Loutfi, understand from that entry, that number? A. I understand the

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original number in the Essas Book. Q. What is that? A. "Essas" is again the original register.

Chief Justice: Have we got that book as well?

Mr. Clerides: No.

Chief Justice: Have we got to look at that?

Mr. Clerides: We cannot find it.

Q. Then, after the number? A. There is a name, Fahrettin. Q. Only Fahreddin? A. Only Fahrettin.

Chief Justice: Can you spell that? A. "F a h r e t t i n". Q. Would that appear from the book to be the same person as Mehrettin? A. Yes, my Lords, it is written in the same way and the same character and everything, except the dots. 10

Melissas J.: A dot is missing from the first name? A. Two dots, my Lord. Two dots are missing from the first name.

Mr. Clerides: Can you say that it is the handwriting of the same person? A. Yes, it is the same.

Chief Justice: Would you let him show me the book? Q. Now, what is it you are reading from? A. (Showing in book). Here, my Lord, this is the first name where the dots are missing. Q. Where is the second? A. (Showing) The second is this, with the two dots on it. Q. What difference do the dots make? A. This dot, the first dot, makes the letter M. into F. Q. that is to say it makes a symbol which might be M or F into F? Is that correct? 20

Mr. Korkut: Yes, my Lord, if there was a dot it would have been read Fahrettin.

Chief Justice: And if there is not it is M? You cannot say it makes M into F, it makes a symbol which can be M or F according to whether it has a dot on it or not.

Q. There are two dots. What is the other? A. The other makes "he", that is to say "h" into "kh". 30

Melissas J.: Hard or soft? A. Hard if there is a dot.

Chief Justice: It makes a difference between the soft or hard sound, if there is a dot which is it, hard or soft? A. Hard. Q. Now, reading that word complete with dots, will you pronounce it? A. Fahreddin. Q. And the one without dots? A. Mehrettin.

Chief Justice: (To Mr. Chryssafinis KC): Do you want to ask him anything on this point?

Mr. Chryssafinis KC: No, the only thing is that this column starts from right to left, not left to right. Starts from what we think is wrong, whether it is the right way for people who read it. 40

Chief Justice: I do not know in how much detail it is necessary

for us to look into these things, and we shall have to rely on your help for that. I have been trying to understand what he is talking about and this is all.

Mr. Clerides: Yes, my Lord.

Chief Justice: Do you want anything else from this witness?

Mr. Clerides: I want the next column.

Chief Justice: Which is the next column?

Mr. Clerides: There is a number below. Q. What is the number of that? A. 3574.

10 **Chief Justice:** What was the number above that? A. 3573.

Melissas J: 3573 you have given us.

Chief Justice: We have dealt with column 3573. That is the number. What is that number? A. 3573.

Mr. Clerides: Q. Now, next to that column, what column comes next? A. 3574.

Chief Justice: Is there a number 3572 anywhere along here? A. Yes, in the middle of the book. Q. And what is that number, what does it represent? A. The original number is the Register. Q. And what is that number?

20 **Mr. Chryssafinis KC:** May I understand that this man came from Lefka? He was registered there and that gives the number of the Lefka book?

Mr. Clerides: No, my Lords, the number there has no importance except that Your Lordships will see that there is a number, 3572, and there is no entry in the column at all. From beginning to end, and it may be that they put the number 3572 there in order to complete later the entries relating to Fahrettin. Now I come to the next column which is material for the purposes of my argument. The next column is No.3574, and then there is the name under that.

30 Q. What is the name against that entry? A. Saime the daughter of Haji Hussein.

Chief Justice: That is the beginning of the thing. And the name is? A. Saime, daughter of Haji Hussein, his wife. Q. Whose wife? A. There is nothing more, but it refers to the previous entry.

Chief Justice: Will you want this for some purpose?

Mr. Clerides: Yes, my Lord.

Chief Justice: Let us have a look at it. (Nufus Book shown to Court). Where is it? That is the wife of Fahreddin, is it?

Mr. Korkut: Of Hussein Edip, it comes under the same family

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number, below the name of Hussein Edip. That is the practice in this book.

Witness: Below the name of Edip.

Chief Justice: Perhaps we will see this more clearly later.

Mr. Clerides: Having got down what there is in this book I will make myself clear.

Q. Under the heading "male" is there anything? **A.** Under the word "male" there is "one". **Q.** And under "Family" there is "one"? **A.** There is "one". **Q.** And then it gives "Date of Birth"? **A.** 1223.

Chief Justice: We will have to have a translation prepared of that. 10

Mr. Clerides: Yes, but unless everything is down and translated I cannot make my argument.

Chief Justice: Well, will you explain what translation you want?

Mr. Clerides: A full translation of all these two columns. I mean a record of these two columns in English.

Chief Justice: And the headings, to see what they are?

Mr. Clerides: And the headings.

Chief Justice: (To witness) Can you do that? **A.** Yes.

Chief Justice: Well, we will help you to that extent but it is what you should have prepared. 20

Mr. Clerides: Yes. Of course it is an exhibit and we applied to the Court for a copy of the exhibits. Unfortunately I did not apply to the Registrar for that translation.

Chief Justice: Anyway, we will get it and we will let all concerned have copies. (To Witness) Can you do that? **A.** Yes.

Mr. Clerides: It will be difficult to elaborate on this argument that this is not correct without a translation before the Court.

Chief Justice: That is not your whole argument?

Mr. Clerides: No. Well, I may proceed and then.

Chief Justice: (To Witness) Can you have that translation prepared? You understand what is required? Write there the entries with the headings of the columns which have entries in them, not the others. **A.** Yes, my Lord. **Q.** All right, Thank you. Can you get that done as soon as you can? **A.** Yes. 30

Mr. Clerides: The name reported in the Nufus Book, Edip Hussein, and not Hussein Edip he is the father-in-law of Fahreddin.

Melissas J: According to the evidence, according to your evidence the father-in-law is Hussein Edip?

Mr. Clerides: Yes, Hussein Edip Usta.

Chief Justice: So?

Mr. Clerides: So it may be that Edip Hussein referred to there is another person. Or may be that there was a mistake in recording the name of the son.

Chief Justice: Which to you say it is?

Mr. Clerides: Well, I cannot say. Then it gives as his father's name "Abdullah" which evidently was a mistake and it was corrected to "Moustafa Agha" later. Which is an indication that information obtained for preparing the Nufus Book may be wrong, and needs to be corrected.

10 Then another remark is that under that name, under column 3574, there is an entry reading: "His wife Saime Hussein?"

Chief Justice: Daughter of Haji Hussein?

Mr. Clerides: Daughter of Haji Hussein. Now, there is evidence that Saime was not the wife of Edip Hussein or Hussein Edip.

Chief Justice: But for your case what do you want to show in regard to these people? You want to show that Fahreddin is the son of Osman?

20 **Mr. Clerides:** Yes, my Lord. But the other side relies on this because there is Mehreddin Haji Ahmet in that book, it is conclusive evidence that Mehreddin, Fahreddin, is the son of Haji Ahmet and not of Osman. And my object is to point out mistakes in the record itself.

Chief Justice: But have you not got to show that he is the son of Osman?

Mr. Clerides: Yes. and I have evidence, I have at least two witnesses who knew the deceased personally, who were in the family and who spoke about him.

Chief Justice: But what is it here, in this Nufus Book, that helps you?

30 **Mr. Clerides:** The Nufus Book is not produced to help you but to destroy mistakes, so I am attacking the Nufus book, to prove that it is incorrect.

Chief Justice: Yes, but you are attacking the people who attack your case and you have not built up your case yet. I mean, is it not more helpful to give us the positive evidence which you wish us to accept first?

Mr. Clerides: Yes, well, I will come to that, but first of all I will make my attack and then show my position.

40 **Chief Justice:** Well, you may be right, but I should have thought it would have been much more effective and certainly much easier for us to follow if you first give us your reasons for saying that Fahreddin is the son of Osman, then you can say and when they say he is not, they are wrong for this reason or that reason.

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Mr. Clerides: Very well, I will follow that line.

Chief Justice: Don't you think it is simpler? I must say that we would find it easier to follow the case, it seems to me logic, I say that Fahreddin is the son of Osman and that is why I say it, the other side say he is not and these are the reasons they give that he is not, and that is where they are wrong.

Mr. Clerides: I will follow that line. With regard to the relations of Fahreddin and Osman I may make this general remark. None of the witnesses for the respondents appear to know either Fahreddin or his wife Zuriye because all their witnesses, — first of all Fahreddin died before the British Occupation and the witnesses for the respondents were at the time of the British Occupation either not born or very small boys, but there is evidence on behalf of the appellant of persons living now who knew Fahreddin personally.. And these witnesses are, first of all, witness No. 7. Hatije Abdurezak. A witness for the defence. It is at page 32. She was 92 to 93 years old at the time she was giving her evidence. And she was given to Vehbi Effendi, the father of the deceased, as an adopted daughter. And she was living in the house of the deceased.

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Chief Justice: When you say she lived in the house of the deceased, whose house?

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Mr. Clerides: The house of Vehbi, who is the father of the two deceased. Ahmet Muheddin and Ayshe the deceased whose estate is involved in this case. She says:

When I came to Nicosia I was 14 years old. I was given to Vehbi Eff. as an adopted daughter; he was married at the time: his wife was Fatma Hanim. There were three children at the house, whose names I remember. One was Ahmet Eff; the other Atta and the smallest one was Ayshe Hanim. Ayshe was a child in cradle when I went there. Atta died at the age of 2—3. Vehbi had brothers: one of which was Haji Nouri Eff and the other Fahreddin Bey and he also had sisters; one of them was Havva Mulla who was a schoolmistress, the other one was Ayshe Mulla and the eldest one was Sheriff Mulla. The eldest of the brothers was Fahreddin. Vehbi's house was at Yeni Jami. Haji Nouri lived in his house opposite Saray Square. Fahreddin lived in a house near Hizir Mosque opposite the bath. Vehbi's wife was Fatma Hanim who was a daughter of Tahtakala Imam. Haji Nouri's wife was Hadije who was also the daughter of Tahtakala Imam. Fahreddin's wife was Zuriye Fahreddin and Zuriye had five children: Nesibe, Atiye and Mousteha and also his boys Mehmed Bey, Ferid Eff. and Mehmed Edip. Fahreddin, Haji Nouri and Vehbi were full brothers and their father's name was Osman and their mother's name was Fatma Hanim."

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Now, here we have the name of the wife of Osman.

"Fahreddin had gone to Lefka and he had property there. There he fell ill and left for Istanbul for operation and 2—3 months later he died. He died after the operation. My master received the news of his death

and told us. It was on the eve of a Bairam when we received the news and before these news we had bought henna. My master Vehbi was a Clerk to Cadi: before that he was an Imam of Yeni Jami Mosque. Vehbi died before Haji Nouri. Vehbi died of a shock. Cadi called him to tell him something that £100 were stolen from his drawer and he died out of shock.”

Then she is cross-examined and she insists in that. But I think there must be some mistake in the record at page 33. She says:

10 “I came and found him in the Konak. My master and mistress were weeping as I prepared coffee for them and were saying that Vehbi, Haji Nouri and Fahreddin were brothers born of same parents. My master used to say: “My father’s name was Osman and my mother’s Fatma” and this is how I know it. I heard it. Haji Nouri’s father — full father — was one — he had one father. When they spoke of “same parents” they were referring to Haji Nouri and Fahreddin and they wept and I used to hear. Haji Ahmed was my master’s relation. I didn’t hear Fahreddin being Haji Ahmed’s son. Fahreddin was Haji Ahmed’s son.

Then it says “Fahreddin was Haji Ahmet’s son,” he was not, it should be, not was.

20 **Mr. Chryssafinis KC:** No, no.

Mr. Melissas J: It is clear further down. “He used to say Haji Ahmet was his relation.”

Mr. Clerides: Yes. Then she says “I did not hear Fahreddin’s being Haji Ahmed’s son” So it should be ::Fahreddin was **not** Haji Ahmed’s son” it must be that.

30 **Mr. Chryssafinis. KC:** I made enquiries as to this point as it struck me it was rather funny. I was informed that this witness was pressed in cross-examination and after some time she admitted. And if necessary there will be an affidavit because shorthand notes were not kept. And she gave this answer a quarter of an hour after cross-examination.

Mr. Clerides: But it is not shown.

Chief Justice: If necessary we can get her here again, if she is still alive.

Mr. Clerides: Unfortunately she died.

Chief Justice: Unfortunately we cannot read “nots” when they are not in.

40 **Mr. Clerides:** She says, she admits, that Haji Nouri was a relation of her master, but she says, “I did not hear Fahreddin being Ahmet’s son.” Then: “Fahreddin was Haji Ahmet’s son and he used to say that Haji Ahmet was his relation”. I mean it is. . . .

Mr. Chryssafinis, KC: This point was mentioned in the Court below by the learned counsel Fadil, and Fuad Bey never corrected it.

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Mr. Clerides: If Fuad Bey was there.

Mr. Chryssafinis, KC: He ought to have been there.

Mr. Clerides: Then, in the Re-X'n:

"From the three brothers (Fahreddin, Vehbi and Haji Nouri) the eldest was Fahreddin; and when I also saw them Fahreddin looked to be the eldest.";

So she is one of the witnesses who knew Fahreddin personally.

Then the other witness who speaks with personal knowledge is witness No. 6, at page 28. He says that:

"I am 85 years old I was born in Nicosia in the Tahtakalla Quarter. My father was a gardener. My father had two gardens. One at Tahtakalla and one at Omerieh Quarter where the Electric Power Station is. The place opposite its gate was called "Old Hospital". I busied myself with the garden work when I was with my father. My father then put me in the service of the Imam of Tahtakalla Quarter; I was 14—15 years old then. The house of the Imam of Tahtakalla was near a fountain, it is a long time since I had been there. The Imam of Tahtakalla was then married to a wife whose name I don't remember. I used to call her "Hanim Abla" He had children: both boys and girls. I remember the names of the children: His first child was Attaoullah who is dead; he had been dead before I went to him so I did not see him. When I entered his service I saw his child Yussuf whose nickname was Sallanbash. Imam had another child named Ali Eff. Ali had a wife who was Baroutjizade's daughter and was called Emine."

These are the father and mother of respondents.

"Sallanbash was not married when I went there; he married after I had been settled in the village. The eldest daughter of the Imam of Tahtakalla was Pembe Hanim, the husband was called Kaymakam and used to deal in lumber and wood in the Kouyoumchilar Bazaar. His house was in the Yeni Jami quarter. His second daughter was Hatije Hanim who was Haji Nouri Eff.'s wife. Haji Nouri lived near the Saray Square, the ground storey of which is now a shop. Another daughter of the Imam was Fatma Hanim who was the wife of Vehbi Eff. When I was in the service of Imam, Vehbi had two sons and another child in the cradle. One of his sons was called Ahmed."

That is the deceased.

"I think the one in the cradle was a girl. Haji Nouri had another child named Houloussi from another wife, but he had died before long. Vehbi was at first an Imam of the Yeni Jami mosque—he then became a clerk. Haji Nouri and Vehbi were brothers — they were three brothers the third one being Fahreddin who was the eldest son, second in age was Haii Nouri and the youngest was Vehbi Eff. I saw Fahreddin and know him; he was wearing a turban and gown. I don't know who the father of Vehbi, Fahreddin and Haji Nouri was; I don't remember him in life;

10 but I hear that he was called Osman Eff. Fahreddin had fallen ill and proceeded to Istanbul and did not return. Fahreddin, was married at my time and before going to Istanbul. His house was near the Bath in Omeriye Quarter. His wife was called Zuriye Hanim, who had children. I think there were five of them but I was not hearing their names. She had two boys, I came to know it because they bought vegetables from my father and I used to carry these for them. I knew them before going to the house. When Fahreddin left for Istanbul I had not yet entered the service of Tahtakalla Imam and I used to go to Zuriye's house even after I had entered Imam's service. Haji Nouri used to help her by sending provisions in a basket which I used to take myself. I did not take baskets to Zuriye from other people as well. Haji Nouri used to take a basketful of provisions to Zuriye. The reason why Fahreddin" —

It must be Haji Nouri, not Fahreddin.

20 "used to purvey Zuriye was because she was left a widow after Fahreddin's death. I don't know the name of Fahreddin, Vehbi and Haji Nouri's mother. As for their father's name I had heard it from Haji Nouri. I stayed with the Imam for 4—5 years and then left for the village of Kioumourjou. I sometimes used to come to Nicosia from Kioumourjou, on which occasions I chanced to visit these houses. Zuriye was a blue-eyed tall woman with a fair complexion. Vehbi had a fattish virgin girl in his service who was older than I."

That must be the other witness I referred Your Lordships to.

"I don't remember her name. I saw her recently in the street and recognised her. I can identify her now if I see her. I was circumcised" and so on.

30 So there are two witnesses who are the oldest of the witnesses, who knew Fahreddin and who were in that family and who heard that the father of Fahreddin was Osman and that Fahreddin, Vehbi and Haji Nouri were brothers. Full brothers.

Now, next witness who speaks is witness No. 3, Nazife Tahir, page 23, my Lords:

"My name is Nazife Tahir. I knew Cadi Muhiddin Eff. I was first in the service of Yussuf Zia Eff. who was an Evcaf Clerk. I then entered the service of Cadi Muhiddin and stayed for 20 years. I sometimes went to Yussuf Zia, but stayed at Muhiddin's. After Yussuf Zia's death I used to live at Muhiddin's house for good. My permanent stay with him lasted 20 years. When his sister Ayshe died."

The last of the deceased whose estate is involved in this case,

40 "I was still with them."

So she was in the service of the deceased up to the date of the death of Ayshe.

"I heard many things about her heirs. She used to tell me always about

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Hussein Raji. She used to talk about Raji and say: We don't hear any news from Raji since he left" She used to say that he was in Istanbul. The Raji she spoke of she used to say was the grandchild of her uncle. When I was with Ayshe some one came to ask her hand in marriage; it was Pembe Hanım who was sister of Atta."

Mr. Melissas J: The go between?

Mr. Clerides: Yes but this Atta is the respondent who wanted — he admitted it himself that he wanted — to marry Ayshe, the deceased "Pembe's visit for a suit was after Muhiddin Eff's death. Pembe had come with a woman whom I don't know. I was there and she asked Ayshe Hanım's hand in marriage on behalf of Atta Bey. Ayshe Hanım said:— "I have been unmarried for so many years and I am not going to marry now" We served the guests with coffee and they left. I, then, 2—3 days later went to the market where Atta Bey is. I do hand work with beads and muslin handkerchiefs; and I had gone to Atta Bey to buy beads and cotton threads. When I went to Atta Bey he had suited Ayshe he said to me "You will settle this matter for me". I said: "I cannot intervene". He said: "Ahmed Muhiddin died and Arif also left. You are now two people You may be killed like Sureyya." I had heard a few years before that a certain woman named Sureyya had been killed. When I came back home I narrated to Ayshe what passed between me and Atta. Ayshe then remarked: "If I die is it he who will inherit my estate; once Hussein Raji is living he will inherit my estate."

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That is an admission from Ayshe to Nazife that appellant was entitled to the estate. Then she proceeds in cross-examination to speak about the whole family and how she came to know about the relationship of appellant with the deceased.

Another witness is witness No. 8, Pembe Hassan, at page 34, my Lords:

"My name is Pembe Hassan. I am from Nicosia. I am married — am housewife. My husband is Hassan Ombashi of Episcopi. We live at Episcopi. In Nicosia we lived at the Laleli Jami Quarter. Havva Mulla of Nicosia brought me up."

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And Havva, my Lords, is sister of Vehbi, we have it in the family tree.

"I was an adopted daughter of Havva Mulla to whom I was given by my father Haji Ahmet, the Yaghourtji, when I was five years old. Havva Mulla brought me up and married me off in her house. I was 14 years old when I married. I stayed with Havva Mulla until her death; her body was taken away and then I left. Havva Mulla had three brothers and three sisters. His ~~brothers~~ brothers were Haji Nouri, Fahreddin and Vehbi—these were full brothers. Her sisters were Sherif Mulla, and Ayshe Mulla the youngest being Havva Mulla. From her brothers I only remember Haji Nouri Eff. in life; I don't remember Vehbi and Fahreddin. From the sisters I remember Ayshe Mulla and Havva Mulla in life. For the brothers and sisters whom I don't remember Haji Nouri Eff., Havva

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Mulla and Ayshe Mulla used to say that they were full brothers. When I was adopted by Havva Mulla she was unmarried and without children. Havva Mulla was a widow and she said that her child or children had died. She used to teach children. When she took me she was about 60 years old. I know a certain woman named Mounteha she had a son named Remzi: Mounteha was mentally disordered."

Mounteha is an aunt of the appellant.

Melissas J: Daughter of Fahreddin?

Mr. Clerides: Daughter of Fahreddin.

10 "Mounteha used to frequent Havva Mulla's house and she used to call her "aunt" (paternal). I heard from Havva Mulla that this Moun-
 20 teha was Fahreddin's daughter. Havva Mulla used to serve her with food and sometimes paid her money. As Mounteha was mentally de-
 ranged she used to shout in the streets — near Police Station, and when she came to Havva Mulla, the latter said: "Welcome, why were you shouting last night — You disgraced all our family: why were you shouting and saying "my son Remzi" — Havva Mulla and I used to go to the house of former's brother Haji Nouri on Thursday after closing th school and stayed there until Saturday morning. As Ayshe was not running a school she used to stay at Haji Nouri's House longer. A certain Ferid used sometimes to come to Havva Mulla's house. Ferid Eff.'s visits were not welcomed as he was a habitual soaker and gambler and therefore he came rarely. When Ferid came to Havva Mulla's house (he) used to call her "aunt" (paternal). He came on holidays and at Bairams to wish good bairam but as he was a soaker she did not encourage him so much. Havva Mulla used to say that Ferid was Fahreddin's son and brother of Mounteha, Havva Mulla and Ayshe Mulla used to say so and I heard it. When I and Havva Mulla visited Haji Nouri at his house conversation used to take place about Ferid there. Ferid asked money from Haji Nouri and gamble it away and he said: "He came and asked for money again — he will not stop gambling." These he said to his sisters Ayshe and Havva Mulla. His house was at the Saray Square and he used to talk it over in the bedroom downstairs. Haji Nouri used to say "You see my ^{OTHER} brother Vehbi's son has become a man and took the place of his father" and for Ferid he used to say, "he will not become a man from now on." Mounteha had sisters: They were Kanbour and Nessibe. There was also an Aliye but I don't remember these. Nessieb and Aliye used to come always to Havva Mulla's house and these also used to call Havva Mulla "aunt" (paternal); and they used to complain to
 30 Havva Mulla about their brother that he had not been a man and Havva Mulla said "What can we do, some children turn out a degenerate." Havva Mulla used to say that his father was Osman. From those whom I remember Haji Nouri died first; I was not yet married then. Haji Nouri died 2 — 3 years before my marriage. I attended his funeral. Then Ayshe Mulla died without an issue. At the death of Ayshe I was married. She died 3—4 years after my marriage. I was then at Episcopi. I had heard that Havva Mulla was ill and alighted at her
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house; she was ill over her sister's death; and it was Havva Mulla herself who said that her sister was dead.

The last to die was Havva Mulla. Havva Mulla was confined to bed for three years before her death her legs couldn't support her body, and during the period of three years I looked after her and used to stay with her always. At night Ahmet Eff. used to send her food. During Havva Mulla's sickness Ahmet Muhiddin and his sister Ayshe Mulla used to frequent her house. Before Havva Mulla's sickness, she and I used to go to Ahmet Muhiddin's and Ayshe Hanim's house. When Havva Mulla died Ahmet Muhiddin, spent for her funeral. Havva Mulla after her death left £2 worth goods in her house which Ahmet Eff. caused them to be sold.

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I am going to read anything further from this evidence, but it shows that this Pembe Hassan who was in the service or an adopted daughter of one of the sisters of Vehbi Effendi knows from her that Fahreddin was a brother and knows also that the daughter of Fahreddin, Mounteha, and Fahreddin, were calling her paternal aunt.

The Court rose at 1 p.m. and adjourned to 4.30 p.m. on the same afternoon.

Same afternoon, 4.30 p.m.

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Appearances as before

Mr. Clerides: The next witness who speaks about the relationship of Fahreddin is No. 16 for the defence at p. 45. Fatine Hussein. She is the aunt of appellant, sister of his mother, Ayshe.

Chief Justice: She does not appear on your list, does she?

Mr. Clerides: No She does not appear on the list.

Melissas J: Ayshe appears ?

Mr. Clerides: Not Ayshe Mulla.

Mr. Melissas: Wife of Ahmed Farid?

Mr. Clerides: Ayshe Farid appears. Fatine Hussein does not appear She was living in the house of Ayshe and she does not remember Fahreddin but she remembers Fahreddin's wife Zuriye who was coming to the same house. And she was hearing from Zuriye and from Ahmed Farid that Fahreddin and Vehbi and Haji Nouri were brothers.

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Chief Justice: Where do you get that ?

Mr. Clerides: It says:

"I remember Zuriye Hanim in life — she lived in Kourou Chesme Quarter. My sister Ayshe had four children by Ahmed Farid. The eldest was Raji Bey."

That is the appellant.

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"who is a party to this action, next comes Ferid, Fahreddin and

10 Sadiye. Ahmed Farid's child was called Fahreddin as his grand-
father was so called. From these four children Raji and Feride are
surviving. When Sadiye and Fahreddin died their father was living.
Fahreddin had six brothers and sisters — The brothers are:- Fahred-
din, Hji Nouri and Vehbi — these are full brothers. I don't remember
Fahreddin myself. When I lived at Nicosia with my sister I some-
times went to Flassou. There I had my ^{FATHER} ~~brother~~ Hussein Agha and my
mother Hadije. Vehbi Eff's wife was Fatma Hanim. This Fatma
Hanim used to come to my sister Ayshe's house. I then lived there
and used to see her. My sister Ayshe respected this Fatma Hanim,
very much. Fatma was the wife of our uncle. Vehbi Eff. had
children; Muhiddin Eff. and Ayshe Hanim. These lived in Yeni
Jami Quarter. I and my sister used to visit them. The small Feride
and the small Hussein Raji used to go to Vehbi's house when I lived
with my sister. Ayshe Hanim regarded the children as well. It is
37—38 years since the Raji referred to in the action left Cyprus.

Then in cross-examination, about the middle of the cross-examination;

20 "I don't know what was the name of Vehbi's mother. I don't know
Vehbi's sisters I hear about them. Their names are Ayshe Mulla,
Sheriff Mulla and Havva Mulla. I did not see any of these. I used
to hear from Zuriye and Ahmed Ferid that Vehbi, Fahreddin and
Haji Nouri were full brothers. They said that they were three
brothers born of same parents. I don't know Fahreddin. I am 65
years old. Fahreddin's father was not Haji Ahmed".

His own relation, named Haji Ahmed. That is all. Then next
witness is witness 19 at p. 54. Her name is Muzeyyen Moustafa of
Nicosia;

08 "I am 75 years old I am living opposite Municipal market in
Nicosia. I was 6 years old when Englishmen came to Cyprus. My
mother's name is Zehra and she comes from Peristeronopighi. My
father's name is Mustafa; he was an Imam of Vitsada. My father's
mother was Kirlizade Havva Kadin. This Havva was my father's
mother and her husband was Hussein Edip Koustahi".

We have them in the tree: Hussein Edip Kioustahi and his second wife
Havva Hanum Kirlizade, who had a son Moustafa and that Moustafa
is the father of Muziyyen Moustafa.

Chief Justice: What relation is she then to the man who appears in
your list. Hussein Edip?

40 **Mr. Clerides:** This witness is the niece of Fahreddin. Well, she is the
daughter of Moustafa who is the brother of Zuriye.

Melissas J.: Granddaughter of Hussein Edip?

Mr. Clerides: Granddaughter of Hussein Edip. Now she says:
"I remember my grandmother Havva". That is Havva Hanum Kirli-
zade. "and saw her live with Hussein Edip Koustahi. Their residence

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was in St. Sophia quarter. Hussein Edip died in his daughter Zuriye's house. He was on bad terms with his wife but they reconciled again and my grandmother was by his side when he died Zuriye was Hussein Edip's daughter I don't know Zuriye's husband".

That is Fahreddin.

"I do not remember him; but I know that Zuriye's father had taken her husband to Istanbul where he fell ill and died. Koustahi returned from Istanbul and I saw his daughter, grandchildren and Zuriye his wife were weeping. I was married when my grandmother Havva died and had a child. I was 30—35 years old. My son Mustafa Shevki was about 10 years old when my grandmother died. Mustafa Shevki is living. Hussein Edip died after his return from Istanbul; he died about 2—3 years after. I was about 8—9 years old when Zuriye and her children cried after Koustahi's return from Istanbul I used to go together with my grandmother to Zuriye's house and they used to come to my grandmother's house. I was married into the house of my grandmother Havva Kadin in the St. Sophia quarter. My husband was butcher Kiamil. We lived with my grandmother for eleven years and after 11 years we left as my grandmother did not want us to stay and moved into our present house bought by my husband near Municipal Market. My grandmother Havva was the 2nd wife of Hussein Edip I don't know if Hussein Edip had a wife named Saima. Saima was a neighbour, and I with my grandmother used to go to Saima's house — I know her personally; she was Zuriye's neighbour. Had Saima been a wife of Hussein Edip my grandmother would not have gone to her house. I know Hussein Raji in this action. I also knew his father Ahmed Ferid. Ahmed Ferid's father died in Istanbul. Zuriye was Ahmed Ferid's mother. Ahmed Ferid used to stay with his mother. Zuriye had daughters; Aliye, Nessibe and Mounteha— I also knew these personally. I knew Cadi Muhiddin's sister Ayshe. This Ayshe is related to Raji and Mounteha; they are second cousins — Zuriye's husband and Ayshe Hanim's father Vehbi were brother and sister".

Zuriye's husband, that is Fahreddin and Vehbi were brother and sister. "full brother and sister; I also used to hear this from Zuriye".

Then she comes to Saima:

Saima at the time I knew her, was an old lame woman. I don't know who was Zuriye's mother. Zuriye had a house at Omeriye and her neighbourhood with Saima was at Omeriye. Hussein Edip had a house at Yeni Jami quarter wherein the Englishmen now weave clothing. Hussein Edip had bought it. This house they sold".

Now, besides these witnesses there are three witnesses who know from Muheddin Eff. himself, the deceased, the relation of the father of the appellant with him. And that is witness No. 1, Mehmed Assim Dedezade, that is at page 20. Now this Mehmet Assim Dedezade was

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a merchant in Nicosia, a draper in Nicosia, and he was doing farming as well. He had a shop which was between the shop of Hji Nouri Eff. the brother of Vehbi and Ali Eff: the father of the respondent, Ali Ismet. He knew Ahmet Ferid, the father of the appellant, when he *and when he* was going to the shop of Haji Nouri and asking for help. And he knew from Haji Nouri that Ahmet Ferid was the son of Fahreddin and he was told by Haji Nouri himself that Fahreddin was his brother.

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Chief Justice: Can you read us the passage?

Mr. Clerides: Yes.

10 "My brother Reshad and my uncle Hji Ibrahim and I used to work together. My shop's neighbours were: on one side Hji Nouri Eff: and on the other Ali Eff: who was Atta's father. I kept in this shop 6 years — this was about 40 years ago and over. Lately, I know there was one Ferid Eff. in the Railway Department. I don't know his father".

That is Fahreddin.

"I don't remember (his father's) name.

20 Ferid used to come to Haji Nouri's shop. Haji Nouri used to call me and say: "Here is our pest coming to ask for pocket money". He (Ferid) was then a village roads foreman at Dilliria. Hji Nouri used to tell that Ferid was his brother's son (nephew). Raji's father was calling Haji Nouri "uncle" Haji Nouri used to give money to Ferid who used to call on him every 5—10 days. Ferid had a son named Raji. It is over 30 years since I have known Raji. Raji's father and I used to have drinking parties at Baklavaji Rifat's shop. The boy (Raji) used to come and say to Ferid: "My mother is waiting for you at home". Baklavaji Rifat is Kiamil Agha's son. I have daughters and I have gone to Istanbul to bring dowry for them. I had met Raji before at Beyrouth; there he covered my eyes from behind and said:

30 "Guess who I am", and I recognised him; it was in 1912—1913. To Istanbul I went in 1926 or 1928. I had made 2—3 trips to Istanbul. In Istanbul I passed from Galata — Ahmed Muhiddin was smoking a hubble-bubble there and called me and I entered the club there. He stood me a treat of tea and we had cakes as well. Raji who was sitting near Muhiddin got up and shook hands with me. Ahmed Muhiddin said to me: "Do you recognise this gentleman?"; and I said "I recognised him, he is your uncle's son". And Muhiddin said to me: "This gentleman is our heir". Muhiddin Eff. was there in Istanbul for operation as he was sick. When I saw Raji near Muhiddin

40 he was wearing his official dress of Police Officer".

So we have from this witness that Muhiddin himself, the deceased, acknowledged him as his heir.

Then comes witness No. 4 Hassan Shevket at page 25. This witness was a land registry officer who was requested by the deceased Cadi Muhettin Eff. to recommend Ahmed Ferid.

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Chief Justice: Cadi Muheddin is the same as Ahmed Muheddin ?

Mr. Clerides. Yes, the same, my Lord. He was asked, he was requested by Ahmet Muheddin to recommend his cousin, Ali Ferid, the father of the appellant to be employed in the...

Melissas J.: His nephew, not cousin.

Mr. Clerides: Yes, his nephew. To recommend him for employment and he recommended him and he took employment in the tithe collection.

"Ferid one day came to Famagusta; he had a letter in his hand addressed to me. When I opened it I saw it was from Ahmed Muheddin, it bore his signature. I don't have it now; it is lost".

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Then objection was raised to cite the contents and then at page 27 Hassan Shevket continued:

"I recommended Ferid and he was appointed a Temporary Tithe Officer. I used to see Cadi Muheddin always. The following year I was transferred to Nicosia and Cadi Muheddin thanked me for this help. I was transferred to Treasury Headquarters and was in frequent touch with Muheddin. Muheddin said: 'I am pleased you have had my cousin Ferid employed in the Tithe collection work'".

Then the next witness is witness 5 for the Defence, at page 27, Mehmet Naji of Nicosia. Now, this witness was requested by Ahmet Muhiddin to help Ahmet Ferid for employment:

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"I am a pensioner. Many years ago I was a village Roads Foreman; before that I was a Roads Foreman in the Public Works Department for 15 years. Then I got on to the Commissioner's Office as Village Roads Foreman. As I was a foreman, one day in 1900, I saw Cadi Muhiddin. Muhiddin Eff. invited me through Zeki Eff. of Knodara who is my uncle, and I went to the present Sheri Court which was in the same condition as now. I entered Muhiddin's office and sat. Ahmed Ferid, Village Roads Foreman, was in his office. I knew him before; he was a village roads foreman and worked with Papetta at Dilliria. He was sitting in the office. Muhiddin said: "Do you know why I have called you here. I understand that you are on close terms with the Chief Foreman Kontopoulos and that your request with him would have weight" and referring to Ahmet Ferid as his cousin i.e. uncle's son (on paternal side) he continued: "I have called you for this: Ferid was a foreman at Dilliria, they stopped him for some reasons. I pray you to mediate and take him to Kontopoulos and give my regards to him and tell him that he is my cousin so that he re-employs him". I took Ferid to Kontopoulos he said "All right" but did not re-employ him".

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So far my Lords, there is the evidence of two living persons who knew personally Fehreddin when living. Two witnesses, Nos. 6 and 7. Witness No. 6 in the employ of the grandfather of the respondent

Mustafa Mukhtar Imam of Takhtakala in the family of the respondent and the other witness No. 7 Hatije Abdurezak who was in the service of Vehbi Effendi himself and who knew Muheddin when he was a child and Ayshe when she was in the cradle, and both these living witnesses knew Fahreddin personally and being in the family knew that they were brothers, that Fahreddin was a brother of Haji Nouri and of Vehbi and they gave all the other members of the family.

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Chief Justice: You are speaking of the first two, are you?

Mr. Clerides: Yes.

10 **Chief Justice:** And then you have the two servants?

Mr. Clerides: Yes, who did not remember Fahreddin because they were younger but who were hearing from the family that Fahreddin was brother of Vehbi, and then we have three last witnesses, that is witness No. 1, 4 and 5 who had it from Muheddin himself that Ahmet Ferid the son of Fahreddin was related to him and he was taking an interest, and that we have him admitting that Raji was his heir and then the two other witnesses who have been requested by Muheddin to find employment. to help Ahmet Ferid his cousin for employment.

20 Now against this evidence there is no evidence whatever on the part of the respondents stating anything about Fahreddin. None of them knows Fahreddin, and the main evidence upon which the respondent relies is the Nufus Book.

Chief Justice: That is to rebutt your evidence.

Mr. Clerides: To rebutt my evidenca. Now, I have explained to your Lordships how this Nufus Book was prepared. It was a general Census book.

Has it been translated?

Chief Justice: Yes, I am afraid there are not very good copies that are available.

30 (Copy of translation of entries in Nufus Book handed to Counsel)

Chief Justice: There is nothing on this to show that this was done by witness who came this morning and swore to have it done.

Mr. Clerides: Yes, well, is he here?

Chief Justice: Well, he can be got here.

Mr. Clerides: That is not the whole lot of it, is it?

Chief Justice: Obviously he ought to come here and explain this .

Mr. Clerides: The witness who prepared it?

Chief Justice: Yes. You want this, don't you?

Mr. Clerides: Yes.

40 **Chief Justice:** Will you get him? He is going to be your witness.

At present we have nothing.

Mr. Clerides: We have the original thing but none of us can read it

Chief Justice: But it is a bit too informal, just at this point we have a piece of paper put in front of us and we do not know where it comes from.

Mr. Clerides: Yes.

Chief Justice: Well now, are you going to turn to this?

Mr. Clerides: Yes, my Lord.

Chief Justice: No doubt he will come and say this is his translation.

Mr. Clerides: Yes, my Lord.

I have already explained to Your Lordships how this Nufus Book was prepared under a certain law and it was a general census book. There was a general census held and during the taking of the census this book was prepared. It is at page 103: The original population, Continuation, of Omeriye Quarter, and then:.. Additional population. Then your Lordships will see a number, 3583, which is the general number. Then you have the number of the house which is given as 58. Then you have the name Edip.

Chief Justice: The number of the house is 58? No.

Mr. Clerides: No, the family number. Unfortunately the copy I have is not readable.

Chief Justice: Well, we have got two more. I am afraid they are very bad. (Copies handed to counsel).

Mr. Clerides: No, they are still worse.

The family number is number 58, then the next page (column) under the heading name, is Edip Houssein Effendi Moustafa Agha.

Chief Justice: Is that all one name or what is it?

Mr. Clerides: Yes, one name. Edip Houssein Effendi Moustafa Agha son of Moustafa Agha. Your Lordships remember that I pointed out this morning that originally it was the son of Abdulla and it was struck off and the name of Mustafa Agha was inserted.

Chief Justice: I suppose the translator can tell us why he does not translate "son of".

(Translator, MOUSTAFA LUTFI) comes into court).

Reminded he is on former oath.

Chief Justice: Is that a translation made by you? A. Yes, my Lord. Q. Of page 103? A. 103. Q. Of the Nufus Book which has been produced in the evidence? A. Yes, my Lord. Q. This column here in which is entered the name of Edip Houssein Effendi and Moustafa Agha, find it there, will you? (Witness looks at entry in original Nufus Book). Q. Have you got it there? A. Yes, my Lord. Edip Houssein

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Agha Moustafa. Q. Corrected there, Abdulla scratched out. What makes you say that this man is the son of that man. What is there to show that these are father and son? A. Because he struck out what he wrote originally saying that he was the son of Abdulla. Q. Where is "son of"? A. Here, "bin Abdullah" Q. It is not in your translation R. Because it is struck out. The second time he did not write anything to show that it was the son of Mustafa Agha. Q. Will you sign that copy? A. Yes. (Witness signs copy of translation).

Chief Justice: (To Mr. Clerides) You ought to be doing this, if I may
10 say, so and not me.

Mr. Clerides: I should have done that, my Lord, but all the documents were in Turkish.

Chief Justice: I do not know how important it is, but if you are referring to it we must know what it is.

Mr. Clerides: Quite so.

Q. And then there is another correction which you can point out to my Lords, it is in the column: "Persons who arrive to reside" and under the heading "Date" there is a number.

Chief Justice: "From where he came". Do you mean that column?

Mr. Clerides: Yes, my Lord.
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Chief Justice: "All those who came to settle" or which do you mean?

Mr. Clerides: Yes. Under the heading of "Date of the daily register" the third sub-heading, there is a number 1288 and under it there is 5689. And 1288 is struck out. Is that so? A. Yes, that is so. Q. 1288 is struck out? A. But it is under the second column not under the first column. Q. Yes, the second column of persons who came to settle. But you have it here under the second column? A. No, 1288 was there. The second column. There was a 1288 it was struck out and it was replaced by 1781. Q. You follow the second
30 line? A. Whichever line you follow it is the second column.

Chief Justice: Because it is in the middle of three.

Mr. Clerides: But in this column, in this exhibit? A. There was something, one, nothing else. Q. You are speaking about the second column? Here it is in the second column. A. But it exists in the 3rd column, 1288

Chief Justice: That is the third from the left? A. Yes. Third from the left.

Mr. Clerides: And second from the right? A. It is third from the left.

Chief Justice: If you take this third little column, 1288 is in the
40 column that is third from the left? A. Yes. Q. There was a 1288 in this next column? A. There was in the middle.

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Mr. Clerides: Under what heading? A. Under the heading "Number of general register" Apparently it was a mistake.

Chief Justice: And 1288 was in that column but has been transferred to that one? A. Yes my Lord, evidently it was a mistake. Q. That is what you think? A. Yes, my Lord.

Mr. Clerides: That is all I want from this witness.

Chief Justice: (To witness) Thank you very much for coming to help us.

(To Mr. Clerides). You have got what you want from this witness? You have drawn our attention to two corrections. 10

Mr. Clerides: Yes, my Lord.

Chief Justice: One in the name on the left hand column, as I call it, it is no doubt the left hand column whether it is the first or the last column, so let us call it the left column to which we all agree, the name is on the left one. There is a correction to which you have drawn our attention, as originally put there was the name of Edip Hussein entered as the son of Abdullah and instead of "of Abdullah" the name Mustafa Agha was substituted, the sign meaning "son of" being omitted when the correction was made?

Mr. Clerides: Yes. 20

Chief Justice: Then you have drawn our attention to another correction and I do not know what the importance is now — I expect you will tell us — where in one of these columns there was the figure 1288 it was struck out and replaced by 1731 and that is in a column headed: "Number of General Register". And "1288" which was down in that column was transferred to the next column on the right, which is "Date of the daily register"?

Mr. Clerides: Yes.

Chief Justice: All right, we have got that.

Mr. Clerides: Now, my first submission, my Lords... 30

Chief Justice: You do not want this witness any more?

Mr. Clerides: No, my Lord.

Chief Justice: All right. (To witness) Thank you.

Mr. Clerides: My first submission is that from the evidence it appears that the name of the father-in-law of Fahreddin is Hussein Edip and not Edip Hussein

Chief Justice: That is according to the oral evidence?

Mr. Clerides: According to the oral evidence.

Chief Justice: Is that the name of the father of Zuriye?

Mr. Clerides: Yes, that is the father-in-law of Fahreddin.

Chief Justice: Yes, the father of his wife was Hussein Edip?

Mr. Clerides: Yes.

Chief Justice: Ought I to take this down?

Mr. Clerides: Yes, my Lord, it is important.

Chief Justice: All right, I will. According to the oral evidence. And according to the Nufus book ?

Mr. Clerides: It is Edip Hussein.

Chief Justice: You attach importance to that?

10 **Mr. Clerides:** Yes, I attach importance simply to show that this Nufus Book having been prepared from the information received cannot be accurate.

Chief Justice: Can you tell us what the importance is of transposing the names ?

Mr. Clerides: Well, it simply shows that if it was intended for Hussein Edip the people who prepared the Nufus Book from information were not correctly informed as to his correct name.

Chief Justice: But what is the importance, what is the meaning? If you say Hussein Edip or Edip Hussein can it be the same person ?

20 **Mr. Clerides:** No, not necessarily.

Chief Justice: But can it? I do not mean necessarily.

Mr. Clerides: No, if one is Edip Hussein he is Edip Hussein, and if one is Hussein Edip he is Hussein Edip.

Chief Justice: Is either of these names understood by the Turks to be the name of the father?

Mr. Clerides: No. Hussein Edip are two names of one person, one may say two Christian names, of one person.

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Mr. Clerides: Neither of them is the father's name.

Mr. Clerides: Neither of them is the father's name.

30 **Chief Justice:** But the same person could not be called by one Hussein Edip and by others Edip Hussein?

Mr. Clerides: No. So there must be a mistake in the information obtained.

Melissas J: It may not be a mistake, it may be a different person.

Mr. Clerides: Or it may be a different person.

Chief Justice: At any rate you cannot transpose the names for the same person?

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Mr. Clerides: No

Melissas J: They are transposed in Greek. That will be in Turkish

Chief Justice: You mean that it does not matter if the one name comes first?

Melissas J: No, in fact for record purposes the surname comes first.

Mr. Clerides: That may be, my name is John Constantine Clerides, they cannot say Constantine John Clerides, I am John Constantine Clerides, but the surname may be put first.

Chief Justice: I do not know how important this is. At this stage is it important? 10

Mr. Clerides: Yes. The importance of it is that when these people were collecting information, either they were wrongly informed as to the actual name of the owner or Edip Hussein is another person. Either the one or the other. And that such a mistake may have been made it is apparent from the name of the father. They got first that he is the son of Abdullah and then when they found that he was not the son of Abdullah they changed it.

Then under it, under a different No. 3574 there is an entry under a different column in which the name of some other family had to be inserted. Under another general number, under No. 3754 you have the entry: "His wife Saime daughter of Hji Hussein". Now if that entry purports to show that Saime is the wife of Edip Hussein it is wrong, in accordance with the evidence, it is not a correct entry. 20

Melissas J: If it refers to Hussein Edip it is not a correct entry ?

Mr. Clerides: It is not a correct entry because Saime was never the wife of Hussein Edip. As to this there is the evidence of witness 16.

Melissas J: You read it already.

Mr. Clerides: Yes, there are two witnesses, I have read the evidence of one, it is witness 19 at page 55.

Melissas J: Neighbour of Zuriye ? 30

Mr. Clerides: Yes, and there is another witness who was....

Chief Justice: Probably at page 20, the shopkeeper.

Mr. Clerides: No, my Lords, it is another witness to whom I have not referred. Witness 20 my Lords, witness 19 and 20. Dervish Hussein of Nicosia. He is the mukhtar of the quarter.

Chief Justice: Well, at any rate so you say that the Edip Hussein in this column is not the Hussein Edip who was the father of the wife of Fahreddin?

Mr. Clerides: Yes. Or even if the entry refers to Hussein Edip the

entry under it "his wife Saime daughter of Haji Hussein" is not a correct entry, it is an erroneous entry because there are two witnesses, witness 19 and 20 who say that Saime was only a neighbour of that house.

Chief Justice: In fact you say that Edip Hussein here is not Hussein Edip the father of Fahreddin's wife?

Mr. Clerides: Yes

Chief Justice: And you say that is so because a) the names are in the wrong order, and b) the wife of this man is given as Saime who was never the wife of Fahreddin's wife's father?

10 **Mr. Clerides:** Yes.

Chief Justice: All right.

Mr. Clerides: And I said that Saime was not the wife of Hussein Edip.

Chief Justice: The point of all that being that you say that this is not the entry relating to the Hussein Edip who appears in your list?

Mr. Clerides: Yes, there is an exhibit in this case from the Land Registry Office, M.K. 3 and M.K. 4 where the plan of the house is given, and the boundaries are given on this No. 14 and the husband of Saime is given.

20 **Chief Justice:** What language is this in?

Mr. Clerides: That is a plan of the house No. 14 at Omeryie Quarter. The plan is M. K. 4.

Chief Justice: And at one point of that it has the entry: Saime Kadin.

Mr. Clerides: Kadin means lady.

Chief Justice: Wife of Ahmed Effendi

Mr. Clerides: Wife of Ahmed Effendi.

Chief Justice: You want this plan?

30 **Mr. Clerides:** No, my Lord, it is only just to show us from this Land Registry record we now see that Saime is the wife of Ahmet Effendi. So that if that land registry record which was made on local enquiry is correct then the Nufus Book is incorrect. And if the Nufus book is incorrect on that point it cannot be relied on as correct.

Chief Justice: The date of the original entry is January 1885.

Mr. Clerides: Yes, I mean it was the time when the plan was prepared.

Chief Justice: And these names are the names of the neighbours, the persons who occupied the next door houses at that time?

Mr. Clerides: Yes, my Lord.

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Chief Justice: 1885.

Mr. Clerides: And it speaks about Saime, and Saime is the wife of Ahmet Effendi, and there is evidence that Hussein Edip had two wives, one Zehra who died and then Havva.

Melissas J: But may I point out, if the date of the marriage of these two persons Edip and Saime given in the register is 1240, which is 1823, and now this plan is 1885. . . .

Mr. Clerides: It is 1885, but then the position is this. . . .

Melissas J: They could hardly be in life 62 years after their marriage.

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Mr. Clerides: And we know that Havva Kadin was living after Hussein Edip's death, and we have it from witnesses that Havva Kadin was living at the time they were remembering, which must be something like 1885 and Saime was a neighbour and that it was a lame woman and she was not the wife of Hussein Edin.

Melissas J: Could you tell us which is the corresponding date?

Mr. Clerides: 1240. The date of marriage.

Mr. Chryssafinis KC: 1824: Because this starts from 1825.

Mr. Clerides: So if he was married at the time and this record must have been prepared sometime in 1870 because the law was made in 1277, so the law under which this Nufus book, this Census book was made was in 1277, so this Nufus Book must have been prepared after 1277.

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Melissas J: After 1860?

Mr. Chryssafinis KC: 1861.

Chief Justice: So now we have two Saimes, one of whom was a neighbour of this particular house in 1885 — I do not think they are different Saimes but we have two names, one was a neighbour of this particular house in 1885 and the one to whom the Nufus book refers was married to somebody in 1824.

Mr. Clerides: In 1240, yes.

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Chief Justice: Well, are they the same?

Mr. Clerides: Well, Hussein Edip never married a Saime. Because the evidence is that he had married two wives, one Zehra and one Havva Kirlizade, and at about the time this Nufus Book was prepared this Havva Kadin was living. We will see later in this record that Edip died in 1296, and there is evidence that he at the time was not living with his wife Havva Kadin and he was living in Zuriye's house in Omereh Quarter and in the meantime they reconciled and his wife Havva Kadin was at his death bed at the time of his death.

So my humble submission is that this record, in so far as it intends to regard Saime as the wife of Hussein Edip is wrong.

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Then the next point which needs consideration under the heading

“Those who come to settle. Registration of Daily Occurrences”. Under that heading there is Mehrettin son of Haji Ahmet. It is not Fahreddin but Mehrettin, son of Haji Ahmet and that he came from Lefka. Now, that Mehrettin, son of Haji Ahmet cannot be Fahrettin, because it is on this that the respondents rely, that Fahreddin is the son of Haji Ahmet.

Chief Justice: The other errors that you have been pointing out would not really matter, would they, as long as this particular is right?

Mr. Clerides: Yes, it is simply the proof that this Nufus book is not correct.

10 **Chief Justice:** I mean it really does not matter tuppence to this case whether Fahreddin’s wife is Zuriye or not, whether his father-in-law’s name was Edip Hussein or Hussein Edip.

Mr. Clerides: It matters simply to show that this Nufus Book is incorrect.

Chief Justice: I quite understand that, but apart from that it would not matter.

Mr. Clerides: No apart from that it would not matter except in this entry on which the respondents rely.

20 **Chief Justice:** Ah yes, but you want to say the important entry is wrong and that the liability to error is shown by an error in a less important matter, it is not that these things matter to the case really, do they, except as showing liability to mistake?

Mr. Clerides: Yes, my Lord.

Chief Justice: Well now, we come to the actual person who is Mehreddin?

30 **Mr. Clerides:** Yes. Mehreddin, son of Haji Ahmet, and it is on that entry that the respondents rely, on this Nufus Book, but the name is not Fahreddin, it is Mehreddin. We will see at the end the name of Fahreddin. There it does not say Fahreddin, son of Haji Ahmet, it speaks about Fahreddin only. And then it gives in the second column the date of his death, 1293.

Melissas J: Whose death?

Mr. Clerides: Fahreddin’s death

Chief Justice: Which is 1293?

Mr. Chryssafinis KC: 1877.

Chief Justice: (To Mr. Clerides) Do you agree with that?

Mr. Clerides: Yes, one year before the British occupation. And then under it you have Edip Effendi.

40 **Chief Justice:** Is this Fahreddin who appears at the right hand edge of this page of the Nufus Book, is he the person with whom you are concerned?

Mr. Clerides: He may be, because the house which is recorded in here is the house of his wife Zuriye.

Chief Justice: The probability then is that he is the person, isn’t it?

Mr. Clerides: Yes. But there it does not give the name of the father.

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Chief Justice: But his father's name is not given and you say the date of his death is?

Mr. Clerides: Is given as 1293.

Chief Justice: Which is 1877, is that right or wrong?

Mr. Clerides: It is right.

Chief Justice: For the actual person concerned?

Mr. Clerides: Yes, my Lord. And then under it there "Edip Eff." and the date of his death is given 1296 (1879).

Chief Justice: Well, who is this person, Edip Eff?

Mr. Clerides: It must be regarding the Edip in the original entry Edip Effendi. And that must be so because his number is given as 3573 which is the original number in the column, while with regard to Fahreddin it gives No. 3572. 10

Melissas J: Which is blank in the Nufus book?

Essad Bey: Which is blank. In the Nufus Book there is no entry against 3572.

(The Court rose at 6.00 p.m. for quarter of an hour.)

6.20 p.m. Court resumes hearing.

Appearances as before.

Mr. Clerides: Now, there is one more point which I should like to raise with regard to this Nufus Book. Under the law the presence of the persons resident in a house ought to be recorded. If the entry and the column "those who came to settle" refers to Fahreddin, the person in question in this case, it is remarkable with regard to the correctness of this record that his wife Zuriye who was the owner of the house is not recorded at all. So my submission is that this Nufus Book cannot be a correct record. 20

Chief Justice: You agree that "Fahreddin" on the right hand end of it, is your Fahreddin?

Mr. Clerides: It may be, I cannot say definitely. 30

Chief Justice: The date of his death is right and the place from which he came, Lefka, is that right?

Mr. Clerides: Lefka need not necessarily be correct, that is in evidence that Fahreddin had certain property at Lefka. It is also in evidence that Hussein Edip was mudir at Lefka.

Melissas J: One of your witnesses, witness 7, Hatije Abdurezak, says that Fahreddin went to Lefka.

Mr. Clerides: He went to Lefka because he had properties at Lefka, not that he is of Lefka.

Melissas J: Well, liable to reside. 40

Mr. Clerides: No, he went to Lefka for his properties.

Mr. Melissas J: Could you refer to it. Page 32, is it?

Mr. Clerides: Yes,

Melissas J: "Fahreddin had gone to Lefka as he had property there. Then he fell ill and left for Istanbul for operation" and so on.

Mr. Clerides: Yes, in the same way, my Lords. Hussein Edip was at some time Mudir at Lefka and from there he was transferred to Nicosia to the Evcaf Office. There is evidence, the evidence of the same witness. So, of course, even if Fahreddin, the name Fahreddin, refers to the Fahreddin in question that he came from Lefka, that he is from Lefka, that may be a wrong information because he was of Nicosia, he had property at Lefka where he went to see his property and he fell ill and went to Istanbul.

Mr. Clerides: And the difference between the two names, Fahreddin and Muheddin is two dots. nothing else.

Mr. Clerides: Yes, nothing else, but there it says Muheddin Haji Ahmet, when he comes to record the death of Fahreddin he does not say Fahreddin Haji Ahmet. and the name Muheddin, son of Haji Ahmet, the information might be wrong taking into consideration that other wrong entries have been made in the same register.

Now, even if the register was correct, it would only be prima facie evidence which might be contradicted. I cite in this respect from Phipson on Evidence 7th Edition, at p. 554.

Chief Justice: What do we need this for? I mean we have got a case of our own dealing with a Nufus Book which says it is not conclusive. Do you want anything else? It cannot talk about Nufus books, whatever else it talks about.

Mr. Clerides: Public register.

Chief Justice: We do not want it if the local case is needed on that point.

Mr. Clerides: In that case I have cited, my Lords, the entry in the Nufus book was corroborated by two witnesses. Here, in this case there is no evidence to corroborate, no evidence on the part of the respondent to corroborate the Nufus Book. But there is evidence on the part of the appellant to contradict that book with regard to the father of Fahreddin, and that being so, taking into consideration the way this Nufus book was prepared, the apparent mistakes and omissions in that register, the entry with regard to the name of the father of Fahreddin in view of the oral evidence adduced which has not been contradicted by anybody, cannot be relied upon.

Now, that is the first ^{POINT} of rebutting evidence adduced by the respondents, and the second is the Register kept in the Evcaf Office. No. 51 at page 112.

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Chief Justice: This is a register of Ilams?

Mr. Clerides: Register of Ilams.

Chief Justice: That is judgments, isn't it?

Mr. Clerides: Yes. There is a translation of this, my Lords, and I submit that this is not admissible in evidence for the following reasons

Chief Justice: What is not admissible, the translation ?

Mr. Clerides: No, the Register is not admissible in evidence.

Chief Justice: I suppose it was objected to in the Court below?

Mr. Clerides: Yes.

Chief Justice: Practically everything seems to have been vigorously objected to in the Court below. 10

Mr. Clerides: Practically. It was not objected to when it was produced, but when the register was to be produced there was an objection. And as the previous registers were admitted my learned friends did not consider it necessary to make a further objection.

Now, there is cross examination with regard to this No. 51 at page 67:

"The books I produced are registers of Ilams (Judgments, orders, etc). In this register No. 51 the signature and seal of the Cadi do not exist. The date of Ilam is 24 Rebiulevel, 1290, and does not bear the hand and seal of Cadi." 20

Chief Justice: Which is it, do you know?

Mr. Clerides: Yes.

Mr. Chryssafinis KC: May I interrupt? When this document was about to be produced no objection was raised and there it is in evidence, the only thing which the learned counsel said in the Court below appears at the top of page 67 of the notes:

The witness said

"I produce it.

Fuad Bey: I submit that the evidence so far produced has been confirmatory and not rebutting. 30

Fadil Eff: I contend that all of it has been rebutting. (Witness continues)". and so on.

He never objected to the production of the book and therefore, in my humble submission it is evidence, the only question is, what weight. Once it was admitted and not objected to it is part of the evidence.

Mr. Clerides: My learned friend did not object to the production of this evidence because when the same witness was called on behalf of the plaintiffs, and his evidence is at page 7. . . .

Chief Justice: Well, if it was not objected to in the Court below

and it was in evidence, can you object to it now?

Mr. Clerides: There is a general objection to the production of the Register at page 7 and as the Court allowed the production of the Register of Flams it was not thought necessary to raise the objection again.

Mr. Chryssafinis KC: On page 7 there is the following :

“Fuad Eff: We object to its production as we don't know if it has any bearing on the present case. We would not however object to production if it afterwards is discarded when found not to be connected with this case”.

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Chief Justice: It is on the ground of relevancy?

Mr. Chryssafinis KC: Yes, nothing else.

Mr. Clerides: Very well.

Chief Justice: I take it that you withdraw your objection which I have noted, that it should not be admitted at all and was in fact inadmissible?

Mr. Clerides: Well, I will confine myself to the weight to be given to that document, my Lords, now.

Chief Justice: Still, I must say that I have got a note of your objection here and I must say that you withdraw it.

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Mr. Clerides:: Yes, my Lord, I withdraw it as no objection was raised at the time although it appears from the cross-examination. Most probably my learned friend had not seen the document before it was produced, they did not ask to see the document in order to see whether it was properly signed or sealed.

Chief Justice: Well, they have pointed that out.

Mr. Clerides: Yes, and they have pointed it out before the cross-examination.

Now, it is clear, my Lords, that this is some copy and it is not certified for as a true copy and it is not an original.

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Chief Justice: What is this? It is a record of judgment is it?

Mr. Clerides: It is a copy of judgment but not signed, not sealed, not certified to be a true copy.

Mr. Chryssafinis KC: It is a record in accordance with section 1814 of Medjelle; it need not be signed at all.

Chief Justice: It may be most explicit about itself but it means nothing to me by looking at it.

Mr. Clerides: My Lords, I have pointed out the reference to the cross-examination and then there are some further questions through the Court :

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"The names of witnesses appearing in the register are not their signatures, it is in the hand of the person who wrote them: and the letter from the Governor is also a copy".

There is a letter from the Governor at the beginning.

Melissas J: Mark with red pencil the whole of this Ilam.

Chief Justice: We simply want to know which one is talked about. Here is a blue pencil, put a line down it if you don't mind.
(Essad Bey draws a line down the side of the Ilam in question).

Chief Justice: And initial it.
(Essad Bey initials next to blue line).

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Chief Justice: Have you got a translation of it there? Will you read it?

Mr. Clerides: First of all I would like to point out that this purports to be a copy of an Ilam which is neither certified nor signed nor sealed, it is not original and it is no certified to be a true copy. Then it reads as follows: "The esteemed Hussein ^{EDIP} Effendi". . . .

Chief Justice: Let us try and identify these people as we go on.

Mr. Chryssafinis KC: Edip Effendi is the one mentioned in the Nufus book.

Chief Justice: Do you say that he is the father of Zuriye, this one? 20

Mr. Clerides: Yes, "son of Mezzafer".

Mr. Korkut: No wrongly translated. Moustafa in the original.

Melissas J: It is corrected in my copy.

Mr. Clerides: I put Moustafa in order to show the distinction, anyhow.

Essad Bey: No it is Mouzzafer.

Chief Justice: Well, if there is a dispute about it and you cannot settle it we shall have to get some evidence on it.

Mr. Clerides: (Reads)

"The esteemed Hussein Edip Eff., son of Muzzafer, living in the Omeriye Quarter of Nicosia which is the seat of the Governor of the Island of Cyprus makes a full declaration and acknowledgment by word of mouth in the exalted Sheri Court in the presence of his son-in-law Hussein Fahreddin Eff. son of Elhaj Ahmed". . . . 30

Chief Justice: Now this is the Fahreddin we are talking about?

Mr. Clerides: Yes.

Chief Justice: There can be no doubt about that?

Mr. Clerides: Yes.

"of the same quarter thus causing the present record to be made. As it is stated in the certificate produced, the house No. 14 Hizir Street 40

of the same quarter consisting of 3 ground floor rooms with verandahs in front, one kitchen, one W.C., some yard with fruit trees and other trees, as per permit issued to me by the L.R.O. and up to this day belonging solely and exclusively to me and bounded on one side by my grand-daughter Nesime Hanım's room and building site, on the other side."

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Chief Justice: The names are rather differently spelt, they often are.

Mr. Clerides: Yes.

"by Saime Kadın"

10 and that is the Saime we have spoken about.

and partly by the house of Ayshe Mulla, daughter of Mehmet Eff., on the other by a building site and on the fourth side by public road, is sold and delivered by me to my son-in-law Hussein Fahreddin Eff."

Melissas J: Presumably this is the house No. 14 in the Nufus book?

Mr. Clerides: Yes, my Lord.

20 "with all its appurtenances, having been offered and accepted by him, free of any invalidating or collusive terms and with a conclusive sale for the sum of 1300 piastres. My son-in-law Hussein Fahreddin Eff. accepts the sale to him as above, and he takes over and appropriates the said house for the said sum of 1300 piastres which he paid to me fully, the receipt of which I hereby acknowledge and I further declare that there has been no deception or overcharge in the sale and that in the said house described as above I have no right or interest whatsoever any longer and let him be the absolute owner and enjoyer of the house in the way he likes.

In testimony whereof the present document is executed this 24th day of Rebiulahir, 1279."

Chief Justice: Date in our reckoning?

Mr. Chryssafinis KC: 1863.

30 **Mr. Clerides:** Now, there are the names of witnesses there, there are no signatures, in the document itself there are no signatures and there is no seal or signature of the Cadi if this İlam was issued. If this İlam was issued.

Chief Justice: It is not a judgment, is it?

Mr. Chryssafinis KC: It is, my Lord. In those days if one wanted to transfer a house he had to appear in the Sheri Court and record the sale and even the judgment would be recorded.

40 **Chief Justice:** When I say a judgment I mean something in settlement of a dispute. It was merely a formal record of a transaction which had happened in Court as it was required that it should. It is just the record of a transaction, isn't it?

Mr. Clerides: Yes, my Lord. In the first place, at the begin-

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ing it says: "The esteemed Houssein Edip Eff. son of Muzzafer", there it is Mussafer as it is stated and not Moustafa, this document contradicts the Nufus Book.

Chief Justice: We shall have to get the translator to-morrow.

Mr. Clerides: If it is Muzzafer and not Moustafa then this document contradicts the Nufus Book.

Chief Justice: Now then, I have got it down here that in your view this record or Ilam ought not to be accepted as proof of what it states for certain reasons?

Mr. Clerides: Yes.

Chief Justice: Now, can you list them? Will you give me shortly the heading of the reasons for which you say that this should not be accepted as proof of what it states? First of all the name.

Mr. Clerides: The reason is the names of the contracting parties do not appear in it. I mean the signatures of the contracting parties.

Chief Justice: Is there any reason why they should?

Mr. Clerides: Well, my Lords, if their signature was not there and it purports to be a record made in the presence of the Cadi it should have been signed by the Cadi and sealed by him.

Chief Justice: Yes, but we are talking now about the signatures of the contracting parties. This record is apparently made in pursuance of a section of the Medjelle?

Mr. Clerides: No.

Chief Justice: It is not? Well, what is it made under?

Mr. Clerides: It is alleged by the respondent that it is made..

Chief Justice: If you are criticizing this document for not having certain particulars you ought to show that it ought to have them. What is there which requires the signatures of the parties to a record like this?

Mr. Clerides: Well, my Lords, this is a copy, evidently it is a copy, it is not an original document.

Chief Justice: What is the section? 1814? This is the section which it is suggested contravenes the form of this record, 1814: (Roads) "The Judge must have in Court a book kept in such a manner as not to admit of forgery or fraud, in which his judgments and notes are contained and he must keep this book with care, but at the expiration of his office he must give this book personally, or by a man in whom he has confidence, to his successor".

Is that all?

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Mr. Clerides: Yes, that is all. So of course he should keep that book, that register, in which he will enter the notes and the decision in such a way as to prevent any fraud which may be made.

Chief Justice: I mean, why should that contain the signature of the seller and the buyer?

Mr. Clerides: First of all the book should contain the signature of the Judge.

Chief Justice: No, I am asking you about the seller and the buyer. We do not want to get lost in these small points, so perhaps we had better go on to the next.

Mr. Clerides: Well, my Lords, the position is this, if it is a document it is a record^d which has witnesses and it purports to have been signed by witnesses.

Chief Justice: Does it ?

Mr. Clerides: Well, it says "witnesses" there.

Chief Justice: Somebody records that these were the witnesses.

Mr. Clerides: Yes, but who is that somebody? If it was a record which was made by the Cadi then it should have been signed by the Cadi. If it was a record^d prepared by the Cadi it should have been signed by the Cadi and that the Ilam is issued.

Chief Justice: But perhaps it is not, it is not supposed to be made by the Cadi.

Mr. Clerides: Even if it was made by the clerk of the Cadi it is in the presence of the Cadi and it must have been signed.

Chief Justice: All right, you say that for whatever reason it should have been signed?

Mr. Clerides: Yes, my Lord.

Chief Justice: You cannot point to any law or requirement which says so but you just think it would be right for it to be signed?

Mr. Clerides: My Lords, all I can say is what appears from the questions put to the witnesses through the Court, and it says that "Ilams are issued now as well. They are signed and sealed."

Melissas J: Under the present rules of Court.

Mr. Clerides: Well, that is the position. What I can see, my Lords, is this. This is a copy. It is something written by a certain ~~PERSON~~ it appears from beginning to end in the same writing and it bears the names of certain witnesses and has no signatures at all, it purports to be an Ilam published by the Cadi and it does not bear the signature of the Cadi. There is nothing to indicate that it is an

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authentic document or a certified copy of an authentic document.

Now, whatever that document is, it is proved by the Land Registry Office that it was not acted upon. Because this property was found in the books of the Land Registry Office registered in the name of Zuriye and not Fahreddin.

Melissas J: To the wife, that is to say.

Mr. Clerides: Yes, to the wife.

Melissas J: Probably a nominee.

Mr. Clerides: If it was bought by Fahreddin on the death of Fahreddin we know that he had a wife and children.

(Interpreter, Moustafa Loutfi comes into the Court).

Chief Justice: (Addressing interpreter). As you are here I am afraid we shall want you to help as again. You are still on your oath. Would you look at that entry and read us the first line of it? Is it difficult to read? A. It is very difficult to read. Q. It is peculiar writing, is it? A. Yes, my Lord. Q. You cannot manage it? Would you like to sit down and study it for a bit? A. Yes, if you don't mind.

Chief Justice: In the meantime, Mr. Clerides, we can go on.

Mr. Clerides: Yes my Lord.

It seems that whatever that document is it is not an original document, in any event it has not been acted upon because in Exhibit M.K. 3 which is search No. 929 it says that this house devolved upon Zuriye from her father Hussein Edip. So if that document was correct then the house should have been registered in the name of Fahreddin, while the Land Registry Office should not show that Zuriye inherited it from her husband, but from her father, Hussein Edip.

Chief Justice: Where does it say this?

Mr. Clerides: It is stated in the search. The search was obtained in 1946. It records this. Registration 510.

Mr. Chryssafinis KC: I am sorry to interrupt. During the Turkish Occupation there was no Land Registry Office. The Ilam was the thing. After 1878 anyone who had an Ilam was allowed to have any property, and he had to come forward. Very probably by that time the man was dead and the wife came forward.

Mr. Clerides: No, there was a Land Registry at the time of the Turkish occupaton.

Chief Justice: Can you at this moment give us any date ?

Mr. Clerides: It says: Registration No. 510 in the name of Ali Riza, subsequent purchaser, it is derived from registration 6711 of 1875. Which is the plan to which we referred. This registration was originally registered in the name of Zuriye Hanoum, daughter of Hussein Edip, Effendi; that is at the time this property was registered in 1885 after local

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enquiry, it was registered in the name of Zuriye by inheritance from her father. Hussein Edip and not from Fahreddin her husband, which indicates that Hussein did not sell the property to Fahreddin.

Now the Nufus Book, my Lords, and this register which is a copy, are relied on exclusively without any further evidence to prove that Fahreddin was the son of Haji Ahmet. That is their whole evidence. And this evidence, as I have already submitted, is contradicted by the evidence of persons living at the time and of other persons who were in the family and who knew that Fahreddin was the son of Osman.

10 There are some names I cannot read.

Witness: Hussein Edip Effendi, son of Moustafa.

Mr. Clerides: Isn't it Muzzafer? A. It cannot be Muzzafer. The name is Moustafa.

Chief Justice: Why, as a matter of interest, do you find that difficult to read, is it the handwriting, the style, or what? A. The handwriting and the style, both. Both the style and the individuality of the handwriting. But the name is quite clear. Hussein Edip Eff: son of Moustafa.

Mr. Clerides: Moustafa is clear, it cannot be any other name?

20 Are there any dots? Does Moustafa require any dots? A. My name is Moustafa and I know how it is written, it requires a dot.

Chief Justice: Even now you still use the dot? A. No, not now my Lord, I used to write it with a dot.

Mr. Clerides: Now, besides the evidence.

Chief Justice: Can we now dismiss this witness?

Mr. Chryssafinis KC: Before he goes, my Lords, could he be asked if the name Elhaj Ahmet is the same as Hji Ahmet? It occurs in the 6th line.

Witness: Elhaj and Haji is the same.

30 **Mr. Chryssafinis. KC:** It is in the 6th line of the translated copy before your Lordships

Chief Justice: It appears on the 6th line of that (the original text) does it? A. No, my Lord, on the 3rd line. Q. All right, what is the name? A. Ibn El Haj Ahmet. The son of Haji Ahmet. Q. Who does that refer to? A. Hussein Fahreddin Effendi.

Chief Justice: (To Mr. Chryssafinis) And you asked him if El Haj is what?

40 **Mr. Chryssafinis KC:** If El Haj is synonymous with Haji. Q. Of course up to now he is the son of Hj. Ahmet, in this document he is called El Haj as Ha'i? A. Yes it is the same, El Haj is the Arabic for Haji. Q. It means the persons who have gone on a pilgrimage to Mecca? A. Yes. means the persons who have gone on a pilgrimage to Mecca? A. Yes. Haji is

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the Turkish and El Haj is the Arabic.

Mr. Clerides: I do not want anything more from this witness.

Chief Justice: (To witness) As far as we can say, we may have to call you again. Anyhow, thank you for again helping us.

Mr. Clerides: Now, what remains for me is to refer Your Lordships to the evidence of four witness who stated that respondent himself knew of the existence of Radji the appelland who was the heir but he supposed him to be dead.

Chief Justice: The respondent himself being Mehmet Atta ?

Mr. Clerides: Mehmet Ata acknowledged that Raji, that is the appelland, was the heir 10

Melissas J: In the direct line ?

Mr. Clerides: Yes of the direct line, but he was dead. And one of these witnesses is witness 2, Ali Raji, on page 22 of the record. He was at the time, my Lords. District Sergeant Major of the Police in Nicosia, now he is Inspector. On page 23 of the record, line, 10; referring to a meeting he had with the respondent, Mehmet Ata he says:

“I said; “There is a certain Remzi — he also alleges to be an heir.” —
“Upon these words Atta Bey said: “None of these is an heir; the real heir is Raji who is a police officer in Turkey but as there are no news from him for the last 15 years he is dead.” 20

Chief Justice: Then follows a curious interchange.

Mr. Clerides: Yes, my Lords, because Raji was the appelland, Raji was the sergeant, he made fun of it perhaps, this Raji is himself.

Chief Justice: Very well, you refer to that.

Mr. Clerides: Yes my Lord, and then I refer to Witness No. 11 at page 40, to witness 13, at page 41. to witness.

Chief Justice: Can you take them one by one?

Mr. Clerides: They are speaking of the same transaction.

Chief Justice: They merely support the conversation? 30

Mr. Clerides: Not that conversation, they support another conversation in which all four were present at the auction sale.

Chief Justice: Give it to us from one of them and then speak of the other.

Mr. Clerides: Yes, my Lord. At page 40 witness 11 says that he was present at the sale by auction of the property of Ayshe.

Chief Justice: That is Abdullah Dervish?

Mr. Clerides: Yes.

Chief Justice: Auction of what ?

Mr. Clerides: Of the property of Ayshe. Personal effects of Ayshe Vehbi, the deceased, by the Sheri Court:

"I said to Atta "there is a talk about Remzi asserting that Raji Bey of Istanbul is an heir. What do you say on this?" Atta said: "There was an heir named Raji but he is dead. At present I am the heir." Assaf was also hearing him. Then we got in and the sale began."

And then witness 13 at page 41 speaks about the conversation with Atta during the auction.

10 "My partner auctioneer Abdu'lah said to him: "Don't pay attention to the destruction made by the children. After all she (deceased) has another heir — according to a report by Remzi a certain Raji is shortly coming from Istanbul and that he is the principal heir." Mehmed Atta said: "Yes there was such an heir but he is now dead, my son, I am the principal heir now."

And then Witness 14 at page 43, Assim Hussein, the witness says to Atta:

20 "Assaf said to Fetthi: "I heard from the people outside that according to Remzi's allegation there is a certain Hussein Raji abroad who is the heir". Mehmed Atta was there in the verandah. Mehmed Atta said: "There was such an heir but he is now dead. "Then I said to Atta: "But I used to see this man at Beirut, he is still living and he is a policeman. I had seen him at Sorsouk Hotel. The man I referred to was Hussein Raji."

And lastly witness 15, Yussuf Zia, at page 44:

30 "A quarrel took place between Fetthi and Assaf. Fetthi said: "Why do you bid up; this is our property." Atta was a little distance away Assaf replied: "Don't be in a hurry, there is an heir in Istanbul to whom Remzi has cabled and Raji is coming from Istanbul and he is the heir." Atta turned and said: "There was such an heir, but he is now dead. There was a big crowd there including auctioneer Assim. Assim said: "I saw him in Istanbul and he is still in Istanbul; and a Police Officer. I am wrong to say in Istanbul, he was in Beirut."

40 So the case of the respondent rests on the Nufus Book and on the Ilam Register. The case of the appellant is that the entries in the Nufus Book are not correct and are not conclusive evidence of its context. They can be prima facie evidence which may be contradicted, and this evidence has been contradicted by living witnesses who knew personally Fahreddin and who were in the family of the parties and knew that Fahreddin was brother of Vehbi; and that respondent himself admitted to four or five persons that the appellant was the real heir and he thought him to be dead.

That is all I have to submit to Your Lordships.

The Court rose at 7.25 p.m. and adjourned to 10 a.m. on the following morning.

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Chief Justice: I think before we hear you, Mr. Chryssafinis, there is one other point on which you may be able to help us, Mr. Clerides. You have not referred at all to the judgment against which you are appealing. It is not a very informative document of course, but still, how could you explain, for example, that the Sheri Judge rejected all the evidence on which you rely?

Mr. Clerides: My Lords, the judgment of the Court is very short and does not state whether they believed the evidence of the witnesses or not, it simply says: 10

“Court having considered the evidence adduced and the legal and Sheri value of the Exhibits put in by the parties in this consolidated action, gives judgment as per claim of the first part” . . .

Chief Justice: Why do you say he rejected the evidence upon which you rely?

Mr. Clerides: Well, in my grounds of appeal I said:

“It has been established by the evidence adduced by the appellant that Fahreddin Osman, the grandfather of the appellant, was Vehbi Osman’s brother and that this Vehbi was the father of the deceased Ayshe Vehbi and therefore that appellant is entitled to be the exclusive heir of the estate of the deceased, and respondents being relatives of the deceased on the maternal side, they cannot be heirs.” 20

Well, I did not say that the evidence was rejected, the learned Judge considered the whole evidence and the exhibits produced and gave the judgment.

Chief Justice: But did he believe your witnesses?

Mr. Clerides: Well, he does not state whether he believed the witnesses or not, he simply stated he considered the whole evidence and the legal and Sheri value of the exhibits. 30

Chief Justice: And if he did not believe your witnesses can we say he was wrong in disbelieving them?

Mr. Clerides: He did not say that he believed any witnesses but that it has been established by the evidence, the whole evidence, and it may be that he was influenced by the exhibits.

Chief Justice: What has been in our minds is the possibility that it might be desirable to get a little bit more information from him. There

is a procedure for that in criminal cases but I do not know whether there is one in Civil Cases.

It is early to say but it may be advisable to put two or three questions to him, about which we may possibly agree, or about which the two sides may possibly agree if it seems necessary.

Mr. Clerides: Yes, my Lord.

Chief Justice: Because if he says he did not believe these witnesses.

Mr. Clerides: That would be another matter, that would be another matter if he says he does not believe the witnesses, but it may be that he simply was influenced by the Nufus Book and the Ilam, the Register of Ilams.

Chief Justice: There is nothing you want to say about the judgment?

Mr. Clerides: I have nothing more to say except that the evidence adduced on the part of the appellant is not contradicted by the evidence adduced by the respondent but it is only contradicted by those two documents which may be inaccurate.

Chief Justice: Inaccuracy is bound to arise in a case like this, obviously, and one would have expected the judge in the normal course to have expressed some opinion on it, but he has left us without any guidance at all, and it may be necessary to ask him for some — I do not quite know yet if it is. I do not myself know of any other method. Obviously we cannot have him here and cross-examine him, but I do not myself know of any other method than putting two or three questions to him which we might frame between us, but it is early to say whether that is necessary. At any rate you have nothing more to say on the judgment?

Mr. Clerides: No, my Lord.

Chief Justice: And you have referred us, I think to the Nufus Book and the Ilam and to one plan which was made by the Land Registry office as a result of a request for the search?

Mr. Clerides: Yes, my Lord.

Chief Justice: That is all you want to refer us to in the way of exhibits.

Mr. Clerides: Yes, my Lord.

Chief Justice: Very well then.

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Mr. Chryssafinis KC: May it please Your Lordships: The hearing of the case in the Sheri Court started on the 19th March, 1946. It was concluded on the 4th June, 1949, and a very short judgment delivered on the 30th October, 1950, which judgment reads as follows:—

“Court having considered the evidence adduced and the legal and Sheri value of the Exhibits put in by the parties in this consolidated action, gives Judgment as per claim of the first party in action No. 14/45 i.e. that Mehmed Atta Ali Ismet.

Chief Justice: I can only suppose that “Sheri Value” means the value of certain documents looked at from the point of view of the community for whose benefit these documents were prepared? 10

Mr. Chryssafinis KC: That is so. Is not that the same as the legal value?

Chief Justice: Quite so, but it is the legal value from the point of view of the community. as for example a document looked at by a Portuguese may have a different significance than when looked upon by an Englishman.

Mr. Chryssafinis KC: Quite so, but the Sheri Court is part of the law of this Colony:—

“Pembe Ali Ismet, Mustafa Mukhtar Ali Ismet and Gioulshen Hafiz Moustafa are the exclusive heirs of the deceased Ayshe Vehbi of Nicosia.” 20

My Lords, short as the judgment might be, it is obvious from reading it that the trial court did not believe that the appellant was the grandson of Fahreddin, who, Fahreödin, was the son of Osman. Because if he had believed that part of the evidence adduced by the appellant it would have been an end to this case, and I hope during my argument that it may appear that the trial Judge was quite right in taking that attitude. So that when he says there that he considered the evidence it imports a number of instances, that is to say its weight, credibility, and so on 30

My Lords, the following facts which may be important as land marks which are not denied by either side, are admitted by both sides, subject to some modifications which I shall try to mention as I go on:

1. That Osman Effendi had three daughters and two sons. That is to say Vehbi Osman and ^{Hji}Nouri Osman. The appellant further alleges that he had also a third son called Fahreddin Osman, who was the grandfather of the appellant. But the respondent says that this is not so, that the grandfather of the appellant was Fahreddin Hji Ahmet, and it is common ground that if the respondents prove that fact that there is an end to the claim of the appellant because the same person cannot be at the same time the son of Osman and the son of Hji Ahmet. 40

2. Hji Nouri Osman died on the 27th January 1902.

3. That Ahmed Ferid, that is to say the father of the appellant, died in the year 1910, and that it was after his death that the appellant his son left Cyprus for abroad. Roughly he left two or three years after the death, it is not clear, the records give the date round 1912 the son left the colony.

4. (Which is rather important), that Ahmet Muhiddin died on the 25th October, 1937, and that when he died he was a rich man and all his property passed to his sister Ayshe Vehbi who was rather poor herself.

10 **Chief Justice:** I see that the Sheri Judgment refers only to Ayshe.

Mr. Chryssafinis KC: Because Ayshe has all the property now, because when her brother died she inherited all the property and therefore the only person who owns property is Ayshe because Ahmet Muhiddin had got nothing in his name and so all the property now in law is vested in Ayshe, though part of it was not entered in her name.

Chief Justice: But if the appellants' claim is right would that be so ?

20 **Mr. Chryssafinis KC:** No, I shall state all these facts and I shall then explain why all these facts are very telling for the claim of the appellant.

5. That Ayshe Vehbi died in April, 1945. (It is in evidence before, but I want to have it in some order.)

6. That if Ahmed Ferid, that is to say the father of the appellant, was the grandson of Osman, he would have been entitled in the year 1902 to participate in the inheritance which Haji Nouri Osman died possessing. Haji Nouri, the second son, died on the 27th January 1902 and when he died the father of the appellant was alive ^{AND HE DIED} in 1910, and therefore he was alive for eight years after the death of his uncle on the paternal side as he alleges.

30 **Chief Justice:** He would have been entitled?

Mr. Chryssafinis KC: Yes, it is admitted.

Chief Justice: You are listening to this, I take it, Mr. Clerides?

Mr. Clerides: Yes, my Lord.

Chief Justice: Well, is that correct? Do you dispute that particular point?

Mr. Clerides: The dates are not disputed.

40 **Chief Justice:** I do not think you heard rightly. Let me put to you what he says: He says that it is not disputed that if the appellant's father, that is Ahmed Ferid, was a grandson of Osman he would have been entitled to share in the estate of Hji Nouri who died in 1902.

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Mr. Clerides: Yes, my Lord, that is not disputed, if he had any property.

Mr. Chryssafinis KC: Yes, we shall prove he had.

7. That if the appellant was the grandson of Fahreddin the son of Osman he would have been entitled in the year 1937 to participate in the property which Ahmed Muhiddin died possessing.

Chief Justice: Wait a minute till we work that out. He would have been entitled..?

Mr. Chryssafinis KC: To participate.

Chief Justice: That is the appellant?

Mr. Chryssafinis KC: Yes, the appellant, to participate in the available property which the deceased Ahmed Muhiddin died possessing, in the year 1937.

8. That if the appellant proves that he is the grandson of Fahreddin and that Fahreddin was the son of Osman he is entitled to the whole inheritance which forms the subject matter of this appeal.

9. That if the appellant fails to prove the previous fact, then there can be no doubt because it is admitted, that the respondents, the four respondents, are entitled to divide exclusively amongst themselves the said inheritance.

Chief Justice: That is so, Mr. Clerides?

Mr. Clerides: Yes, my Lord.

Mr. Chryssafinis KC: And 10. That Hussein Edip or Edip Hussein, as they like to call him, who, in my humble submission is the same person, — and will become apparent by an argument not lasting more than a few seconds — was a Mudir at Lefka, and also that the said person was the father-in-law of Fahreddin Hji Ahmet.

We humbly submit, my Lords, that it is more than obvious that the appellant is the grandson of Fahreddin Hji Ahmet and has nothing at all to do with Osman.

My Lords, at this stage, when these ten facts form the common ground of the parties, it may be necessary to read the grounds of appeal, but before doing so, my Lords, it may be relevant to state that throughout the trial both in the Court below and in this honourable Court the appellants have tried their very best to exclude certain documentary evidence, and I hope that in due course your Lordships will be persuaded beyond any doubt why is all that effort of theirs. Because that documentary evidence, that is to say the Nufus Book, the two entries in the Nufus Book coupled with a judgment, with an Ilam issued by the Sheri Court in those days, plus the fact that Fahreddin Hji Ahmet had a garden consisting of 8 donums at Lefka, coupled with oral evidence, it is conclusive that the appellant has got no case whatever. And the trick, if I may describe it with that word, to which they had recourse,

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is to bring forward certain witnesses to say that Fahreddin was the son of Osman and not the son of Hji Ahmet. But at the same time it is common ground as I said before, that Hussein Edip was the father-in-law of Fahreddin Hji Ahmet, and only that fact gives the lie to all the witnesses who came forward for the appellants in the Court below. I shall deal with that as soon as possible in due course.

10 What are the grounds of appeal, my Lords: And of course, it may be as an indication, but as a rule if a learned experienced counsel frames the grounds of appeal, as a rule the grounds which he puts first are the more important, and they are as follows: What is the first ground?

“1. Sheri Court was wrong in accepting the following as evidence:

(a) The Nufus Book of Omerye Quarter, page 103.

20 In dealing with the subdivision a) of this paragraph my learned friend in this Court had no other option, after he was referred to a judgment issued by this Honourable Court some time ago, but to abandon that ground of appeal. But as he was fully aware that if that ground of appeal were abandoned unconditionally then he had no case at all to argue, he started attacking these particular entries in the Nufus book because they had certain corrections and so on. I have here an appeal case which says — I will not cite it — that corrections may affect only the weight to be attached to a document of this sort and not its admissibility, but I hope in this case your Lordships will be persuaded that these corrections are absolutely immaterial and have nothing to do with the entries in that book.

Chief Justice: I think they were used by Mr. Clerides to attack the weight.

30 **Mr. Chryssafinis KC:** Yes, but if I may say so, in a case in which not only hearsay evidence but hearsay upon hearsay evidence was admitted, a book which was prepared almost eighty years ago, even from hearsay evidence, it cannot but have more weight, for the simple reason that when the entry was made nobody could expect the present case, and therefore that mistake was bonafide, and one cannot say the same thing about witnesses who remember details of that conversation which took place seventy years ago, the more so as it was trifling in those days, nobody would have cared if a certain cousin was a cousin or nephew on the paternal side with a certain gentleman. And considering the dates, they included even exclamation marks.

40 And the second paragraph is as follows:-

“(b) It is clear from Register No. 51, called the Register of Ilams, p.112 that it is neither signed nor sealed by the Cadi, and it can be clearly seen also that the names of the witnesses therein appearing were not signed by the witnesses themselves but written down by the person who entered the Ilam”.

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My Lords, you have seen the article of the Medjelle which deals with that particular point and as it has already been decided by Your Lordships I am not going to elaborate on that article of the Medjelle, because it is so clear that any effort to make it clearer is absolutely a waste of Your Lordships' time. A mere glance at that book cannot fail to persuade even those who appear for the appellant that it is most clearly kept, there are no erasures at all, it is more than obvious that the book was a whole book and that the entries therein had been made some 70, 80, 90 years ago, or even a hundred years ago, and nobody can say that this book was manufactured in order to defeat the claim of the appellant in this case. My learned friend would have been right if all the other entries in that book had had the seal of the Cadi and his signature and the signatures of the witnesses, but the way that book was kept is uniform, I mean to say in no *Ilam* is there the seal of the Cadi and in no *Ilam* do witnesses sign themselves. And I am certain Your Lordships would not want me to deal with that part of the argument of my learned friend that the contracting parties had to sign, because if that were so it is as if all the litigants of this Court or even in the Court below had to sign under any judgment which your Lordships issued. But in any case there is a rebuttal presumption, to put it at the lowest, that any book or document kept under the law is properly kept unless the contrary is proved, but in my humble submission it was properly kept in this case because the article is 1814 of the Medjelle:

"The Judge must have in Court a book kept in such a manner as not to admit of forgery or fraud".

And this book is kept in such a way that there is no space left empty:

"in which his judgments and notes are contained, and he must keep this book with care, but at the expiration of his office he must give this book personally, or by a man in whom he has confidence, to his successor".

Which must have been done because otherwise this book would not have been kept for so many years.

The second ground of appeal is this:

"Sheri Court was misled by the said inadmissible documents in arriving at the conclusion that the appellant was not an "asaba" heir of the deceased Ayshe Vehbi".

Now, my Lords, the second ground is very significant in this way, because it is drafted in such a way which indicates that if these documents were properly admitted the Sheri Judge was not misled, but he was misled only if they were improperly admitted. That being so, if these documents are admissible, in my humble submission, again the appellant has no valid grounds in supporting this appeal.

And thirdly.

Chief Justice: But can you say that the ground of appeal does mean that?

Mr. Chryssafinis KC: It says:

“Sheri Court was misled by the said inadmissible documents” It does not attack the documents, it is very significant, they do not attack the documents themselves, they say the documents were inadmissible, and once they are admissible, they are of such weight and such effect that the trial court had nothing to do but to take them into consideration. And if that is taken with the weight to be attached to the Nufus Book and to the Ilam then my submission may become clearer.

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Chief Justice: I do not think it really means that, this ground of appeal, but what I take it to mean is that even if the documents were admissible that he put the wrong construction on them.

Mr. Chryssafinis KC: “Sheri Court was misled by the said inadmissible documents”.

Chief Justice: You can leave out ‘inadmissible’ because he said that already.

Mr. Chryssafinis KC: No, because this was drawn up by an able counsel, I do not think he would add a word unless he thought it were necessary.

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Chief Justice: Or did not think. The construction I put on that is in accordance with their argument.

Mr. Chryssafinis KC: It is not very important. The third ground is:

“3. It has been established by the evidence adduced by appellant that Fahreddin Osman, the grandfather of the appellant, was Vehbi Osman’s brother and that this Vehbi was the father of the deceased Ayshe Vehbi and therefore that appellant is entitled to be the exclusive heir of the estate of the deceased, and respondents being relatives of the deceased on the maternal side, they cannot be heirs”.

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That my Lords, I have already humbly submitted, that if the Trial Court would have come to the conclusion on the evidence of certain witnesses who deposed that Ahmet Ferid was the son of Fehreddin Osman he would have had no other option but to give judgment for the appellant, from the very fact that he did not do so it is obvious that he did not believe the evidence. I am sorry that in the way the judgment is drafted he did not say so by absolute words, but the maximum I can say is by implication.

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Chief Justice: I take it that the case can be put, one aspect of it in this way: There is no doubt that the respondents proved what they tried to prove, that is that on the maternal line they were entitled to

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the estate, and that is not disputed. There was no doubt about that. Therefore the appellants had to prove that they had a better right. If there was any doubt about that opinion, any doubt about it in the judge's mind, he had to give judgment for the respondents. That is the position. So there was no doubt about their claim, nobody doubted it, there was doubt about yours, and it was the burden on you, Mr. Clerides, really to establish your claim; if the judge felt any doubt whether you had a claim or not he could only reject it.

Mr. Chryssafinis KC: That was the next point of my address.

Chief Justice: Yes, that is how it stands, there can be no doubt about that anyway. 10

Mr. Chryssafinis KC: What I was going to say is that the combined effect of the oral and documentary and rebutting documentary evidence produced by the respondents in the Court below is overwhelming in disproving the alleged claim of the appellant, and at the same time of putting themselves in such a position as to show that they are the nearest heirs either of one of the two deceased from the maternal side, not any other heir on the paternal side existing at the time of the death of either Ahmet Muheddin or Ayshe Vehbi.

In order to do so I propose very shortly to go through the evidence given on behalf of the respondents in the Trial court so that I may try first of all to establish even the negative in this case, which in a way also establishes the case of the defendants because if they exclude themselves, the respondents by the appellants being 'asaba' heirs then there is an end to this appeal. 20

I should like to cite from page 6 of the notes a short passage from the evidence of witness 2, Mehmet Djevdet who speaks about same property which belonged to Cadi Ahmet:

"In the records in my possession there appears a property registered in the name of Ayshe Hanim Vehbi Eff. of Nicosia — it is a shop in the Qorkut Eff. Quarter — the registration number thereof is 284 of 8.11.1940. This property passed to Ayshe Hanim from Cadi Ahmed Muhiddin Eff. by inheritance — it passed to her fully. This transfer was effected on Ayshe Vehbi's application personally". 30

My Lords. at this stage I may be allowed to make the following comment: The gentleman who really was rich was Cadi Ahmet Muhiddin who died in 1936, if the story of the appellant is correct he was entitled at that time to most part of that inheritance, that is to say he was entitled to participate in the inheritance with Ayshe Vehbi. But they put up a very funny story that nobody knew where he was, he never heard of his uncle's death as he alleges he was his uncle and therefore he took no steps. But if that was so, how did he hear of the death of Ayshe in 1945, why should the persons who were so eager and full of good intentions towards him did not take the same measures to inform him as they did nine years later? In my humble 40

submission, my Lords, the answer is very obvious, it is one and only one, because had he put that claim at that time before the death of Ayshe then Ayshe was in such a position that she could put an end to his claim in no time at all, because Ayshe was the last person who lived and had any direct connection with Osman. So if he would have made that claim during the lifetime of Ayshe it would not have taken more than a few minutes to demolish his case. And I shall show in due course that the same procedure was followed in 1910 and the same procedure at another time, three times they have not participated in the inheritance if their story was true. And of course when somebody dies, in order that any living heir may be entitled to the property he has to file certain certificates and in this case the certificate of the mukhtar and the azas of the quarter were duly filed with the Land Registry in order to effect that transfer of Ayshe's.

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Chief Justice: What is the point of this passage that you referred us to?

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Mr. Chryssafinis KC: The point is that it is stated there that Ayshe took the whole share, that is to say she took that shop as if she was the only living heir of her brother, which, in my humble submission is the fact, though the appellant says, No, I was entitled to have half if not more of that share, but as I did not hear of the death of my uncle that is the reason I did not participate in the share.

Melissas J: Where is that certificate of the mukhtar?

Mr. Chryssafinis KC: Your Honour —

Mr. Chryssafinis, KC: At page 7 of the notes.

Chief Justice: I have still not got the importance of this passage of the evidence. The woman referred to there is Ayshe Vehbi. She is the woman whose estate is now in dispute?

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Mr. Chryssafinis KC: Yes. Cadi Ahmet Muhiddin who died as I said before in 1937 was the brother of Ayshe and if the appellant is correct he would have been entitled to inherit himself half the share of the property yet he did not do so and he tries to explain that by saying that he did not hear of the death of his uncle. And my argument is this, the same good persons who informed him of the death of his aunt could have informed him of the death of his alleged uncle, because it is the uncle who had the property and Ayshe had nothing, she became rich only after getting the property of Ahmet Muhiddin her brother. And I go further and say this, that the appellant in this case, between the years 1937 and 1945, that is to say shortly after the death of Ahmet and before the death of Ayshe failed to put forward their claim because Ayshe could demolish it in no time.

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Melissas J: You mentioned the certificate of a mukhtar, what was in that certificate?

Mr. Chryssafinis KC: On page 7: "On the death of a person when

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we are to register someone as an heir we act upon the certificate issued by a mukhtar and 2 azas". It is to the effect that a certain person died and the only heir is the applicant. In this case it is stated that the only heir of the deceased is Ayshe Vehbi and nobody else.

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Chief Justice: Was the certificate produced?

Mr. Chryssafinis KC: Yes, my Lord. But it takes the current form: "I, A...B... Mukhtar of a certain quarter... etc". It is translated in the exhibits.

Chief Justice: We had better have it, had we not?

Exhibit NJ. 6

Mr. Chryssafinis KC: Yes, it is translated in the Exhibits. N.J. 6. Page ¹⁰ 91

"We certify that Ahmed Muhiddin Eff. Vehbi Eff., who was a resident of our quarter, died on 25th October, 1937, and as his heir left his sister Ayshe Hanim Vehbi Eff. and no other either in Cyprus or abroad."

So, my Lords, in a way this evidence corroborates, or rather strengthens the entry in the Nufus Book to the effect that Osman had only two sons and not a third son who was the grandfather of the appellant. Because if he had had a son then Ayshe would not have been the only heir of her deceased brother Cadi Ahmed Muhiddin.

Then, my Lords, very shortly I shall cite a very short passage from the evidence of witness 4 at page 8:

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"My name is Ibrahim Orhan. I am the Manager of Turkish Bank Ltd. Nicosia. I knew deceased Cadi Ahmed Muhiddin by name and not personally. On the day of his death there were deposited with our bank six shares. On the death of a person we pass the shares to the names of his heirs as we do with deposits, on the basis of the Certificate produced to us from the Mukhtar and Azas the shares passed to his sister Ayshe Vehbi."

So not only immovable property but also movable property was transferred exclusively in the name of Ayshe as being the only heir.

Before I go further, my Lords, on this point, which may be a thing corroborating the Nufus Book and the Ilam, there are the following facts: Most of the witnesses who were called both by the appellants and the respondents in the Court below have given in great detail the business or the things which each person that was mentioned was doing — and they mentioned over 300 who had nothing to do with this case, but no witness gave the job or the business or the hobby which Fahreddin was doing.

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Melissas J: Except that he had a garden at Lefka.

Mr. Chryssafinis KC: I shall come to that. They say he was a gentleman stationed at Nicosia, who was living in Nicosia, and that he happened to have a garden at Lefka — and that is very important because his son denies that he had a garden there and if he did his case comes

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to an end. They tried to show to Your Lordships that he used to go to Lefka in short trips — nobody said what business he was doing in Nicosia. In my humble submission the inference to be drawn is obvious. That is to say this gentleman who was called Fahreddin Haji Ahmed and not Fahreddin Osman he had a garden at Lefka, he was resident at Lefka, he came at a later stage and resided at Nicosia — nobody knows what he was doing, because had they said he had a garden at Lefka that brings to an end the case of the appellant. And it is very significant in a case in which they remember what 70 years ago was said at that time to a child of six years old, and what happened in a coffee house in Istanbul in 1936, when an old gentleman was having a hubble bubble, nobody remembers what the gentleman was doing in Nicosia, and as I said before, in my humble submission, the inference is obvious, he was not a gentleman who was living in Nicosia, he was just a gardener at Lefka and he married the daughter of the then Mudir of Lefka, and when the Mudir gave him a house in Nicosia he brought his children there two years later to live in Nicosia. From the Nufus Book it is obvious that he came to Nicosia in a certain year. I shall come to that in detail when I come to scrutinise the Nufus Book later, and his two sons followed after two years after he had bought the house, and in my submission that small fact which cannot be contradicted shows beyond any doubt that the grandfather of the appellant was living in Lefka and he was residing there, and that is strengthened by the fact that in the Nufus Book of Omeryeh Quarter of Nicosia the original number is given of his registration, which original number undoubtedly, by inference, must refer to his regular number at Lefka.

So my Lords see that even this fact, this omission, on the part of the appellants to mention what this Fahreddin was doing in Nicosia is a strong corroboration of the entries in the Nufus Book which we produced in the Court below.

Then, my Lords, witness 5 at page 8 — all these are witnesses for the respondents. My Lords this witness is 82 or 83 years old. Because my learned friend said, quite properly, that the only witnesses who knew Fahreddin Osman personally were only two witnesses who gave evidence on his behalf, but the reply to my Lords is very obvious, if in our allegation no person known as Fahreddin Osman ever lived, how could we bring witnesses to show that they knew him personally, so that people who knew who were the predecessors of Haji Nouri or Vehbi never knew about Fahreddin, so this witness is one of those, he says:

“My name is Hafiz Mehmet Rifet. I am from Nicosia. I was a school master and had been so for about 10 years. I knew Ahmed Muhiddin Eff. I also knew his sister Ayshe Hanim. The father of Ahmed Muhiddin Eff. and Ayshe Hanim was Vehbi Eff. I remember Vehbi Eff. living; he was a Sheri clerk and also an Imam of the mosque. Ayshe Mulla was the wife of Gezayirli Hoja” etc.

“Ayshe Mulla’s brothers were Vehbi Eff., Haji Nouri Eff. and

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her sisters were Sherif Mulla and Havva Mulla. I think these were full brothers and sisters”.

So he says there were only two brothers and three sisters.

So, my Lords, this man corroborates the entries in the Nufus Book to the extent that Fahreddin cannot be the son of Osman who had only two sons who are admitted by both sides, but he was the son of Hji Ahmet — another corroboration for the Nufus Book entries.

And what is important in the evidence of this witness is to be found four lines before his cross-examination:- I forgot to mention that this witness was living with a relation of this family, with Ayshe, so he knew everything. He was living with Ayshe, sister of Vehbi, and therefore he was in a position to know very well the persons of whom the family consisted:

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“When Ayshe Mulla lived with Cadi Muhiddin Eff. she had her furniture locked up in one of the rooms of the house I lived. When Ayshe Mulla died Cadi Muhiddin Eff. removed all that furniture”.

If again the appellant was, or his father was, entitled to participate in the present inheritance he was also entitled to participate in the inheritance of Ayshe Mulla. And it is in evidence that only Cadi Muhiddin Eff. took control of the whole property left by that lady.

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So, on three occasions, nobody takes steps, either his father or himself.

And then, my Lords, about five or six lines after the cross-examination starts:

“I don't remember and don't know at all if Vehbi Eff. had a brother named Fahreddin”.

But from his position in the family and from what he knew he ought to have known him.

So, my Lords, even his evidence strongly corroborates the entries in the Nufus Book.

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(Page 12 of
present record)

The next witness for the respondent in the Court below is witness 7, Mehmed Ata, whose evidence appears at page 10 of the Notes. The respondent himself. He is the Plaintiff in Action 14/45 and one of the respondents in this appeal. And, my Lords, about this witness there can be no doubt that he is a close relation to the persons whose property forms the subject matter of this action, on the maternal side, and therefore they are in a position to know the family tree better than anybody else. This witness states:

“The father of Ayshe Hanim and Ahmed Muhiddin Eff. was Vehbi; and Vehbi's brother was Haji Nouri Eff. who had married my aunt Hadije. Haji Nouri is not living, he died about 42—43 years ago”

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And later he states:

"Vehbi had no brothers and sisters other than those I have mentioned".

So, again, this witness corroborates the entries in the Nufus Book. And then, my Lords. .

Chief Justice: That, of course, was his interest.

Mr. Chryssafinis KC: There may be a few persons who are interested and nevertheless may hesitate to take a false oath, but even if his evidence is dismissed it will make no difference in this appeal.

10 Then, at page 12 he deals with the conversation of Ali Raji and the other four auctioneers:

"Ali Raji's name was not mentioned at the sale of the estate and I did not know he was likely to be an heir — nor did I hear his name before Hussein Raji's arrival".

My Lords, one may say, why four auctioneers and a police inspector come forward and say that the respondent has made a declaration harmful to his case? In my humble submission a mere glance at the combined effect of their evidence is sufficient to demolish it, because after all one does not make a statement of this sort, if he knew that Ali Raji was the nearest relation than himself, and after all why in a place where there must have been more than hundred persons present, only four auctioneers came, and it is in evidence that the movables were of no value whatsoever and if four auctioneers came to be present that shows what their standing must be. But if their story was true, and if the first respondent was going to mention anything of this sort is it not reasonable and likely that he should have said: "What do you say about Raji, if he was alive he would have come in 1937 to take his inheritance and not in 1945". And it is in evidence that everybody in those days had forgotten Raji, not even his closest friends knew his address, how would he remember a name he had not heard since 1912. Even the law says that if he is absent for over seven years and nothing is heard of him he is presumed to be dead, but this Raji had been absent at the time for about 35 years. So it is impossible for someone to remember the name of a person which had never come into his mind for 35 years. But one may say: Why did they give evidence? Because in this case, my Lords, the statements creating or establishing or strengthening the case for the appellant started seventy years ago, and they come up to this period, up to the date this action was instituted. Seventy years ago somebody comes and says: "I know, my good man, Ahmed Ferid, he is my cousin from my paternal side" And this was said to a boy of seven. They brought a gentleman of 70 who heard this story:- In those days there were some close relations living, there were the sisters, there were a number of persons living who were closer relatives, but when one tries to tell a lie and perjure himself he does not

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take care of small details. If this conversation happened 70 years ago, in those days undoubtedly neither the appellant nor the son of the appellant were heirs, other persons were living. I mention this only for the purpose of commenting on the evidence of the four auctioneers and Ali Raji. So it is because people started 70 years ago making these declarations to strengthen the case of the appellant and not only were they saying that the father of the appellant was a nephew of Haji Nouri, but also was a nephew from the paternal side, two things, and as if these two things were not sufficient, they added. 'and therefore my heir'. He starts saying to a small child: "He is my nephew, on my paternal side, he is from my paternal side and he is my heir".

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And if one will follow the evidence in some chronological order one will see that every ten years there is a statement, and the appellant, in order to fortify his case, even on the eve of the proceedings being taken, he brings forward witnesses to say that the respondent was such a fool as to say such words as to demolish his case. Is that within human nature? And regarding a person whom he has not heard of for 35 to 36 years.

Now, my Lords, at page 12:

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"Ali Raji's name was not mentioned at the sale of the estate and I did not know he was likely to be an heir nor did I hear his name before Hussein Raji's arrival.

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And then, further down:

"I don't remember if there was anybody else there. There, a man unknown to me did not tell me that a certain Remzi was shouting out and saying that Ayshe Hanim had an heir named Raji but he is now dead; and at present I am the heir". No such words passed there".

✽

And then a bit further down:

"On that day I did not hear Fethi say"

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Fethi is the son of the first appellant —
"to Assaf "Why do you bid up, these articles belong to us", and that thereupon Assaf said, "You are not the heirs; Remzi says the heir is Ferid's son Raji who is abroad"; and I did not then retort saying, "Yes, my son, but he is dead"."

And then, next page:

"2—3 days after this complaint I did not come across with Ali Raji near my shop. No conversation took place between me and Ali Raji in connexion with this inheritance. Ali Raji did not congratulate me on the big inheritance I would have; and he did not say further "Remzi last night in our quarter alleged that the heir was abroad and that this heir was one named Raji". He did not tell me that Ali Edip had said that Salim would try hard for him i.e. Ali

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(—do— p. 14)

Edip and that Salih and Edip would share the inheritance between them and I did not then reply to Ali Raji: "Don't pay attention to such things, these are the idle talks of the street, the heir in this case is Raji, a Police Officer in Turkey", And I did not then explain to him my relationship and that of Ali Raji with him; because we are not related. Ali Raji didn't say "lest that Raji is I".

And then, my Lords, the first witness is at page 14, witness for the respondents. Hatije Hussein Refet. She is a very, respectable lady who lives in Egypt, she was a close relation to the family. She says:

10 "My name is Hadije Hussein Refet. I am originally from Nicosia but (now) a resident in Egypt. I am sojourning in Cyprus. I am a widow. My husband was Mehmed Dervish an Acting Judge in Egyptian Court. I first went to Egypt in 1897 when I was 17 years old. I know Atta Bey a party in this action. I also knew the deceased Ayshe Hanım and Muhiddin Eff. I also know Atta and his brother — they are my grand uncle Ali's children — Ahmed Muhiddin and Ayshe are children of my grand aunt. Besides my uncle Ali and aunt Fatma they had a sister named Hattije and a brother Yussuf and my grandmother Pembe. My mother's name was Zehra; she died in
20 1938. My uncle Ahmed Fetthi died in 1919 — Gioulshen Hanım is my aunt".

And then:

....."The father of Ayshe Hanım and Muhiddin is Vehbi. I don't remember him; but I was a child (at the time). Vehbi had Haji Nouri as brother and Sheriff, Havva and Ayshe Mulla as sisters — they had no other brother and sisters".

So, in my humble submission, my Lords, even this corroborates the entry in the Nufus Book.

30 And then, my Lords, in her cross-examination this lady who had been detached from Cyprus, she must be well to-do to come to Cyprus to take her holidays and so on, she had no interest in the case, and she stated very clearly what she knew from her own knowledge, and so it is a reply to my learned friend that nobody has spoken from his own experience as knowing Fahreddin Osman, most certainly, my Lords, because this gentleman never existed. Then, in her cross-examination there are these lines:

"I had not heard before of Hussein Raji, who is claiming to be heir in this action."

And then, in re-examination:

40 "My information about Vehbi's brothers and sisters was obtained from my aunts, i.e. from the wives of Vehbi and Haji Nouri. Had there been any other brother and sister I should be informed. I am not an heir of Gioulshen — I do not know if I am her asaba or not. Formerly she had a nephew who had died in Cyprus".

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Then my Lords, the next witness, witness 9 at page 15, Zehra Nevber Hassan:

"My name is Zehra Nevber; I come from Nicosia. I am a school mistress — I run a private school now. Formerly I was being employed by the Education Office — I had 18 years service. I was last at Lefka as directress. As I was going to marry I resigned and withdrew from service. I know Atta Bey and his brothers and sisters well. I know well Ayshe Hanim, Vehbi Eff. and her brother Muhiddin Eff. My mother was brought up by Atta's mother on whose death my mother moved to Ahmed Muhiddin's house — Ahmed Muhiddin's mother Fatma was Atta's aunt (sister of father). My mother remained there for many years — until 1918 when I finished the school. And Haji Nouri Eff. had brought up my elder sister. Hji Nouri was Ayshe and Muhiddin's uncle (father's brother). I think Muhiddin died in 1937."

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And, my Lords, there is nothing in her evidence to the effect that a third brother existed. My Lords, it is this lady who was asked to arrange a marriage between the first appellant of this case..

Mr. Clerides: No.

Mr. Chryssafinis KC: At the top of page 16, my Lords, "Atta wanted to marry Ayshe". So, my Lords, this lady knows even that the first respondent in this case wanted to marry Ayshe after the death of her brother and after she inherited a lot of property, which I understood from my learned friend yesterday, making the following argument: If the first respondent was the heir of Ayshe why should he want to marry the old lady? The reply is obvious, because he was an heir only to a fourth part of her estate, had he married her he would have been entitled to half plus one fourth as heir of right, and one might say £10,000 was too little to marry this lady, but she was so old that he probably did not expect she would reach the age of Methusallah.

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(-do- p. 17)

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My Lords, the next witness is Mehmed Shefik Zia, at page 16. Again, although he is related and attached to the family he has a very good job in America and he was in Cyprus by chance, so he had no object in taking a false oath. You will notice that all the witnesses for the respondent are independent people and people in a good situation in life, and people detached from Cyprus and therefore not afraid to say exactly what they know without offending A and B:—

"My name is Mehmed Shefik Zia. I am originally from Nicosia and for thirty years I had been in America. I am an engineer and an agent for the Mediterranean zone of the American Brace Shoe Railway Industry and Heavy Supplies Co. I am on commission in Cyprus as Cyprus is included in my sphere I visit this place. I know Atta Bey and his brothers and sisters. I knew deceased Ayshe and her brother Ahmed Muhiddin. Ayshe and Muhiddin are the children

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(-do- p. 17)

of Fatma Hanim, a sister of Pembe Hanim, who was grandmother of my mother Feyziye My mother's mother was Nezife, the mother of the last mentioned was Pembe, a daughter of the Imam of Tahtalkala — Atta is my third cousin — Atta is the son of Ali Eff. who was my granduncle (mother's side), and Ali's sister. Pembe was the mother of my mother's mother. I had some other relations with Ahmed Muhiddin besides this relationship. My parents died when I was a child and Muhiddin as a relation of mine had been appointed my guardian. I stayed at Muhiddin's for a short period together with my sister — it was in 1903".

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I may say with every respect that he is one of the very few witnesses who knows all about the family, of course he mentions about 300 names, it appears that his memory is very good, and he knows the family well. Towards the end of page 17 he says:

"Hatije Hanim's husband Haji Nouri Eff. was the uncle of Ayshe and Ahmed Muhiddin. Ayshe Hanim and Ahmed Muhiddin's father were five brothers and sisters: the eldest was Sherife Mulla, whom I do not remember; the others are: Haji Nouri Eff. Ayshe Mulla, Vehbi Eff. and Havva Mulla. I don't remember Hji Nouri, Havva and Ayshe. Haji Nouri is not living now — he died in about 1903, 40 years ago".

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And then, the first para. of page 18:

"I used to hear from her and from my aunts that Havva had two children who had died in small age. According to family rumour Haji Nouri had two sons and had died before he did. My information about the five brothers and sisters of Vehbi, including him as well, was obtained on account of my relationship with them and on account of my life in Muhiddin's house and from my aunt Hatije and from my aunt Fatma who was Vehbi's wife and also from Ayshe Mulla and Havva Mulla".

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And further down:

"I keep a notebook for my private and professional items. Before leaving Cyprus for America I did not know a relation of mine named Ferid — I have a brother in Istanbul — his name is Hassan Behjet Keseli — he is a clerk in the Lond Products Office.

(Pages 19–20 of present record)

So, my Lords, again his evidence corroborates the entries in the Nufus book and also it is very important because he lived in the old days in the house of close relations of this family, more than one, and he never heard of the present appellat.

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The last witness, my Lords, called in the Court below on behalf of the respondents is Mehmed Hayreddin of Nicosia. He says:

(—do— p. 21)

"A certain Dervish is now occupying that shop. Hji Nouri continued to occupy that shop until his death. On his death Ahmed

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Muhiddin had his estate sold by auction I saw it — I was then a draper again and lived with my master”.

Again, my Lords, if Ali Vehbi the appellant's father was what he alleges he is, he would have been allowed again to participate and take part in the inheritance, but again only Ahmet Muhiddin inherited the whole property of Hji Nouri. And then, my Lords, just after the XX'n starts:

“I sometimes used to take his daily provision to his house. I don't know one Ferid. I don't know Ferid in the Railway Department who was a relation of Haji Nouri and Vehbi”.

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Another corroboration for the Nufus Book.

The Court rose at 11.22 a.m. for a short break.

11.42 a.m. Court resumes hearing,

Appearances as before.

Mr. Chryssafinis KC: My Lords, it is very significant that no witness for the respondent has stated that he knew Fahreddin Hadji Ahmet. This is very significant in many ways, and that might tend to prove that all the witnesses for the respondent were saying the truth to the best of their ability, because nor did they speak anything about Fahreddin. If they were ready to tell a lie they would say: “We knew Fahreddin Haji Ahmet and he had nothing to do with Osman. And that being so it was very difficult for the respondent to establish that a certain Fahreddin Haji Ahmet existed or lived and had nothing to do with Osman's family. But an old lady. That is to say that, in my humble submission that is the most important part of the whole case. This is sufficient, in my humble submission, to demolish altogether the case for the appellant. It is witness for the defence No. 7 Hatije Abdurezak of Nicosia, and her evidence is recorded on page 32. And undoubtedly your Lordships will recollect what great significance my friend Mr. Clerides put on her evidence because she is one of the two persons who knew Fahreddin Osman personally. And when in part of the notes it appears that this witness stated that Fahreddin was called not Fahreddin Osman but Fahreddin Haji Ahmet, my learned friend has asked your Lordships to correct the record as being mistaken because the word “not” was missing, and you will remember, my Lord, that your Lordship has remarked that she might be recalled to clear that point, but in my humble submission it is not necessary for the reasons I shall develop.

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Melissas J: She is the one who is dead now?

Mr. Chryssafinis KC: She is dead now. Now, my Lords, I start from page 32: “I was given to Vehbi Eff. as an adopted daughter”. Vehbi Eff. was the son of Osman, so she was in a position to know very well that family:

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“he was married at the time; his wife was Fatma Hanim, there were

three children at the house, whose names I remember. One was Ahmed Eff., the other Atta and the smallest one was Ayshe Hanim. Ayshe was a child in cradle when I went there. Atta died at the age of 2—3. Vehbi had brothers: one was Haji Nouri Effendi and the other Fahreddin Bey and he also had sisters."

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So she states at this stage that Osman had a son called Fahreddin. But about ten lines before the cross-examination starts what she states is significant: "Fahreddin had gone to Lefka". So it is a fact that she knew him.

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10 "as he had property there. There he fell ill and left for Istanbul for operation and 2—3 months later he died".

Therefore, my Lords, it is very important because she relates, she states, that Fahreddin went to Lefka, and that is a great corroboration of the Nufus Book where it has an entry to the effect that Fehreddin came from Lefka to Nicosia.

And then at page 33, which is the most important part of the evidence given in this case, there is the following passage:

"Haji Ahmed was my master's relation"
Haji Ahmed who is the father of Fahreddin.
20 "but I did not ask what was their relation".

So it could not be a son of Osman.

"I did not hear Fahreddin being Haji Ahmet's son. Fahreddin was Hji Ahmet's son and he used to say that Hji Ahmet was his relation".

My Lords, this sounds as being contradictory and some correction must be made. When I read this passage I made very extensive enquiries and an affidavit may be filed. At that stage when my learned friend was cross-examining the witnesses she said she was ill and she was going to die shortly That being so I am going to make peace with
30 my Creator and I will say on oath that "Fahreddin was Haji Ahmet's son".

And if that is not sufficient it will appear amply sufficient from a passage in Mr. Fadil's address on page 82.

Before I cite it, it is very significant to state this: At the time the addresses were made the notes of the court below were not ready so the counsel had to rely on their own notes. When Fadil was addressing both Fuad Bey and Essad Bey were present, that is very important because if Mr. Fadil had made any misstatement he would have at once been corrected either by one or both of the said two counsel who were appearing
40 for the appellants.

So now I come to page 82 of the record.

Melissas J: Probably the notes were ready because there was an appeal in the meantime.

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Mr. Clerides: Yes, the notes existed.

Melissas J: There was an appeal on the question of rebutting evidence and the record was ready.

Mr. Chryssafinis KC: Sorry. I refer to page 74 of the notes before coming to that.

Mr. Korkut: No, this evidence was before the notes.

Melissas J: The address was after the appeal.

Mr. Chryssafinis KC: I apologise really for the slip. Page 74:—
"4.6.1949

(Appearance as before)."

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And going back on the record the appearances are: "Fadil Bey for the Complainant and Fuad Bey and Essad Bey for the Respondent."

And then at page 82, my Lords :

"Another witness of the second party is **Hatije Abdurezak**. This witness gave an acknowledgement evidence, she had learned by heart, in examination-in-chief, and later in her XXn by me she admitted that Fahreddin's father was Haji Ahmed but could not say how Hji Ahmed and Vehbi were related." Etc., etc.

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present record)

In my humble submission, only that part of her evidence, those two lines contained in the cross-examination and this part of the address of my learned friend is sufficient to demolish altogether the case for the appellatant. Because, my Lords, not only she admits at that stage that Fahreddin's father was not Osman, it is obvious from the cross-examination that it was somebody else, she further admits that she does not know what relationship Hadji Ahmet bears to the Osman family. And it could not be a slip of His Honour the trial Judge because the same thing was repeated in the final address and none of the counsel, fully realising how important it was, interrupted to say, it is not so. And I humbly submit that my learned friend Mr. Clerides realised what the effect of that would have been and quite properly in connection with what happened in the court below and not having in mind that part of the address of my learned friend Fadil Bey tried to correct only that part of her evidence which amply corroborates the entries in the Nufus Book that is to say that Fahreddin had properties at Lefka, which had been denied by the appellatant, and also corroborates that Fahreddin Haji Ahmet was not a close relation to the Osman family, she does not know what the relation was.

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THAT FAHRETTIN WAS THE SON OF HJI AHMET. IT ALSO CORROBORATES THE FACT

And therefore one of the more important witnesses whom my learned friend put forward as proving his case, almost to the last detail, in my humble submission, she gave the most deadly evidence against the story of the appellatant.

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Now, my Lords, only with the material on the record up to now one may say that it is the proper time to examine very generally the entries in the Nufus book. And with your Lordships' permission I shall

examine together with this, so as to save some precious time, the contents of the Ilam.

My Lords, from the argument put forward by my learned friend Mr. Clerides to Your Lordships' honourable court it becomes obvious that if Edip Hussein becomes Hussein Edip again, that mere fact may be deadly against his contentions. In the Nufus Book the name is given as Edip Hussein, in the Ilam the name is given as Hussein Edip.

Melissas J: But they are owners of the same house?

Mr. Chryssafinis KC Yes. In the humble submission of the respondents these two names cannot but represent the same man for very obvious reasons, because in the Nufus Book it is stated that Edip Hussein resides at house No.14 of a certain quarter, Omeryeh quarter, and in the Ilam again it is stated that Hussein Edip Eff. transfers house No.14 of Omeryeh quarter. "The esteemed Hussein Edip Effendi" starts the Ilam. Unless my learned friend is prepared to go to the extent of saying that there were two persons living at 14, Hizir Street, the one called Hussein Edip and the other Edip Hussein, in my humble submission I cannot see what else he can do.

It has been admitted by both sides that the father-in-law of Fahreddin was a mudir. And in the Nufus Book it is stated that the profession of Edip Hussein was a mudir. Therefore, my Lords, unless my learned friend on the other side is willing to go further and state that there were two persons living at 14 Hizir Street of Omeryeh quarter, the one called Edip Hussein and the other Hussein Edip and both were mudirs, I cannot see how he can carry that point further.

And again, in the Nufus Book it is down that this Edip Hussein or Hussein Edip undoubtedly was the father-in-law of Fahreddin. We say of Fahreddin Haji Ahmet, they say of Fahreddin Osman. And the father-in-law was living in the same house with Fahreddin. At No.14. The name "Fahreddin" appears in the same column as that of Edip Hussein. And, in my humble submission, the "Mehrettin" undoubtedly is due to a slight omission of the clerk who was preparing the record in omitting to put two dots over his name.

But, in my humble submission, even if that is not so, undoubtedly with this Nufus Book entry Edip Hussein was a mudir and Edip Hussein was the father-in-law, had relation with somebody called Fahreddin. And though it is there "Mehreddin" he is called the son of Haji Ahmet, and your Lordships have noticed in the last paragraph on the right the name of the father is never given, so the one is Edip Effendi, whose name is given as Edip Hussein and then there is Fahreddin, whose name is given as Haji Ahmet. In the first right hand column only one Christian name is given, nothing else, so in order to have only the name "Fahreddin" it imports that his surname must have been given somewhere else. And the only place where the surname appears is in the middle column where it says "son of Hji Ahmet", so they would not have a Christian name hanging by itself. This is the same with "Mahreddin" where they give

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his father's name in the first column and his Christian name is not given again.

Chief Justice: Which is the first column?

Mr. Chryssafinis KC: It depends. I mean the right hand side. I do not know how they copied it. Fadil Korkut informs me that the way it was done, the entries on the right hand side in the Nufus book appear here on the left hand side.

Chief Justice: That is a pity.

Mr. Chryssafinis KC: Is that so, Essad Bey?

Essad Bey: That is so. 10

Chryssafinis KC: So the right hand side of the book is transcribed in the exhibit on the left hand side.

Chief Justice: That is so, both sides agree? So the order is reversed in the transcription. It should not have been done.

Mr. Chryssafinis KC: It might have been done in this way because the Turks start from the right and we start from the left, so it gives the same order as they had.

Chief Justice: I thought you were beginning from the end which we saw first in the Nufus Book, when you come to Fahreddin who is without a father's name, it is not the first but the last, as indeed you would expect it to be as the father's name appears earlier. 20

Mr. Chryssafinis KC: . . . There is also another point in connection with the name of the father of Edip Hussein which relates to this, there was a dispute as to whether it was Moustafa or Mouzzafer, and it appears, that it was Moustafa, which is the name which appears in the Nufus book. And that is still another point.

Chief Justice: Yes.

Mr. Chryssafinis KC: I shall touch only on the most important one. There are two points which one can establish. Another point is this. With Your Lordships permission, and my learned friend's permission I shall just give the words as we know them ourselves and not the Turkish ones, and if I make a mistake correct me. According again to that entry of the Nufus book it is clear that Fahreddin came from Lefka to Nicosia in the year 1872 (1288). 30

MelissasJ: We have put a date, 5th June, 1889, in our copies, in the Nufus book.

Mr. Korkut: 1899 is the solar year, 1888 is the lunar year.

Mr. Chryssafinis KC: What year it is does not matter at all. It is as a basis for something else. And according to that entry. . . .

Chief Justice: That is down as the date of the day they registered? 40

Mr. Chryssafinis KC: No, my Lord, the date when he came to

Nicosia: "Those who came to settle". So he came to Nicosia. "Date of the Daily Register", sub-division of the General division

Chief Justice: That means the date when he came?

Mr. Chryssafinis KC: It is the date of the year when he is registered to have come to Nicosia

So, my Lords, it is obvious from this that Fahreddin came to Nicosia, or was in Nicosia in the year 1872. And, according to another entry in the same Nufus Book it is clear that his two children came to Nicosia in the year 1874. Ahmet Ferid and Mehmet, came to settle in Nicosia two
10 years later than their father.

Chief Justice: That is in the evidence?

Mr. Chryssafinis: It is in the Nufus Book below the date of Fahreddin. It is two years' difference.

Mr. Korkut: In our case it happened that that year jumped two years.

Chief Justice: I do not think we have been told what that entry is.

Mr. Chryssafinis KC: My learned friend thought it was unimportant, but it is important for him.

Chief Justice: Who is this person, Mehmed Ahmed Ferid?

20 **Mr. Clerides:** Appellant's father, my Lord.

Chief Justice: I do not think you brought this out, as we are coming to it it is better to have it in full.

30 **Mr. Chryssafinis KC:** In the Nufus Book in any event the name of Fahreddin Haji Ahmet occurs, there is no doubt about that, and in this entry also the name of Ahmed Ferid, the name of the appellant occurs, which means that these two must have some relation together, they were living in the same house and according to the evidence of the last witness which I cited to your Lordships this witness said that Ahmet Ferid, that is the father of the appellant was the son of Fahreddin Hji Ahmet, and that entry fully corroborates her evidence. And if one will say that a mistake was made in the name there are the same dates, then the business of the father was given as mudir, and the father-in-law was a mudir; there is the evidence of the house which is at 14, Hizir Street, which is corroborated again by the very strong corroborating evidence of a judgment issued by a competent Court of those days, and that Ilam was made in the presence of Fahreddin Haji Ahmet, that is to say the grandfather of the appellant, so no mistake could have occurred at that time in any event that was not hearsay too.

40 And another very strong corroboration is the fact that Fahreddin moved from Lefka to Nicosia. But, my Lords, the most important in my humble submission of this, one of the most important things of the entries in this registration Nufus Book is the following, that the two sons of Edip

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Hussein or Hussein Edip, the same person, followed their father to Nicosia two years after their father came to Nicosia. And they came at the time when the house, according to the Ilam, was registered in his name.

Melissas J: No, the Ilam is 1863.

Mr. Clerides: The date of the Ilam is 1279 and they came 1281.

Melissas J: Well it was that you were saying before, that he was given the house before and then he moved to Lefka.

Mr. Chryssafinis KC: Yes, sorry.

Melissas J: Yes, you were saying before that he was first given the house and then moved to Lefka. 10

Mr. Chryssafinis KC: Yes, and by being given the house for the price of £6 or £7, because the purchase money was 1300 piastres which is about £7, admits that an element of gift was involved in that transfer, because as cheap as life used to be in those days one could not buy a house for £7. So my point is this, if he had another house in Nicosia he would not have been given that house for a nominal purchase value, so he was a Lefka man who at some time decided to move to Nicosia because his father was from Nicosia and his father-in-law was from Nicosia, and he moved to Nicosia in order to do his duties as mudir. I refer to Hussein Edip. Edip Hussein undoubtedly was a Nicosia man, being the father-in-law of Fahreddin ~~Osman~~ Haji Ahmet and he lived for sometime in Lefka in order to perform his duties as Assistant Sheriff and probably while he was at Lefka his daughter got married with Fahreddin Haji Ahmet. After they got married they moved to Nicosia where his father-in-law, gave Fahreddin Haji Ahmet, a house. So, if he was a son of Osman, it is evident that all Osman's sons had houses, he would not have been given a house by his father-in-law, and he would not have lived in that house, he would have lived in his own house and taken his wife to his own house, as all the other sons of Osman were doing. 20

That is all I have to say generally about the entries in the Nufus Book, and I say that they amply corroborate all the evidence of most of the witnesses of the respondent to the effect that Osman had never had a son called Fahreddin Osman, and further it amply corroborates the evidence of witness 9 of mine that the father of Fahreddin, that is the grandfather of the present appellant, was Hadji Ahmet. And that witness further stated that she did not know what was the relation of Haji Ahmet with the Osman family. 30

What I humbly submit is sufficient to demolish all the case for the appellant.

For argument's sake I humbly submit the following. Even if the trial Judge would have believed in toto all the evidence adduced by the appellant and stated so in clear words, and at the same time stated that he disbelieves all the evidence stated by the respondents, if he had omitted to state that he does not disbelieve that witness for the defence 40

who has stated that the grandfather of the appellant is Fahreddin Haji Ahmet, only that fact, combined with the entries in the Nufus Book and the Ilam would have been sufficient, in my humble submission, for your Lordships to upset the judgment and allow the appeal, and the minimum one could say, pessimistic as he might be, is the following, that the appellant has failed in the Court below to prove his case. *IT WAS UPON HIM TO PROVE HIS CASE.*

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10 Now, at this point, my Lords, it may be necessary to read in some detail the judgment delivered by Your Lordships' Court in the case of **Houriye Mustafa & others v. Ahmed Ramadan and others** (C.L.R. XVII p.33).

"This is an appeal from the judgment of the Sheri Tribunal of Nicosia-Kyrenia in which case the Court gave judgment in favour of the plaintiffs who claimed as heirs of Yussuf Jemal Mustafa Raif, deceased of Nicosia, to share in the distribution of his estate".

The next paragraphs are not material, and then :

20 "The plaintiffs alleged that Hashim and Shukri, who were the sons of one Haji Mehmed, were nephews of the deceased Jemal's father Mustafa Raif, whereas the defendants claimed that Mustafa Raif was himself a son of Haji Mehmed and consequently a brother of Hashim and Shukri. The case therefore turned on the question of whether Mustafa Raif, the father of the deceased Jemal, was the son or a brother of Haji Mehmed".

Case Cited:
Houriyeh Mustafa
& others v. Ahmed
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And then :

30 "The case first came on for hearing in December, 1936, but judgment was not given till the end of 1937. On the conflicting evidence the Sheri Judge decided to believe the version of the genealogy given by the plaintiffs. It is difficult sometimes to follow his reasoning as it is not always clear what weight be attached to the different parts of hearsay evidence, since necessarily in a pedigree case of this kind a great part of the evidence must be hearsay."

That might explain why the judgment is so short, this remark of Your Lordships in this case :

"On the appeal of the defendants to the Supreme Court for the case to be reheard on the ground that fresh documentary evidence had come to light, the Supreme Court, on the 5th June, 1939, referred the case back to the Sheri Court to reconsider the case and hear any fresh evidence adduced.

40 On 21st December, 1939, after objection by counsel for the plaintiffs the Court allowed the production in evidence of the Nufus Book of Nicosia".

That was the same book

"and a declaration made in the Sheri Court, Nicosia, in the year A.H. 1291. In the said Nufus Book appeared an entry of the family and

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servants of one Mustafa Raif of Nicosia. This entry clearly referred to the family of the Mustafa, father of the deceased Jemal and of the defendant Houriyeh. It also set out that Mustafa Raif was the son of Haji Mehmed Agha. It was clear that if this evidence was accepted the case for the plaintiffs was at an end".

Though the Judge found against them on the oral evidence.

"as has been admitted in this Court by Mr. Markides, counsel for the plaintiff-respondents. But the entry regarding Mustafa Raif's parentage given in this book received substantial support by the other document — a court record — namely a declaration made in the Sheri Court regarding a certain transfer of a house and land" etc.

10

And then :

"The question therefore arises as to the admissibility of these documents and the weight to be given to the evidence they contain. Clearly, at the lowest appreciation, they corroborate in detail the evidence given by Moustafa Raif's nearest living descendant, namely his daughter Houriyeh, who would be expected to know more than anyone else concerning her father."

The learned Sheri Judge decided that the Nicosia Nufus Book was admissible, but having done this it is difficult for us to understand why he did not accept its contents".

20

So it is obvious that he believed the oral evidence and not the entries in the Nufus Book. The Court of Appeal upset his judgment :

"Nufus Books were kept in all districts under the Turkish rule in compliance with a law passed for regulating provincial administration in the year A.D. 1864, as is shown in Destour, Vol. I p.633. The Book was under the law to be kept by special clerks and to be kept continuously. It was a public register similar to the records kept today. Under Turkish Law, which was the law then applicable to Cyprus these books would be referred to in Court for knowledge of the facts contained in them. Because in England registers have in order to be admissible in evidence to fulfil certain very stringent conditions, which probably a record of this kind would not fulfil, it does not follow that old records kept at a time before the introduction of more scientific and accurate registers would not be admitted on account of falling short of the perfection now required."

30

"The Nufus Books were kept under the provisions of a Turkish law of which the Court can take cognisance. In the absence of evidence to the contrary this Court must presume that this Nicosia Nufus Book was properly kept in accordance with the law then in force, and that like all registers of the kind was a public document. Indeed we know that certificates of births and deaths were made out from it. We think that it must be admissible on similar grounds to those on which old church registers dating from before statutory regulations respecting them were introduced were admissible in England."

40

"Though the law under which these Nufus Books were kept is

no longer in force, it must have remained in force for some time after the occupation."

"If then this book was rightly admitted in evidence, even though the contents be only considered **prima facie** evidence"

"even" they say

10 "it will require very strong and certain contrary evidence to rebut it. At the time the entries were made this action was not contemplated, and no reason has been suggested as to why this record should be wrong. Even if admitted as heresay evidence only, that is to say, the information Mustafa Raif gave of his father's name and his family, surely on this ground no one today could speak with greater authority than Mustafa himself could at the time this record was made some 70 old years ago. This record is besides supported by the evidence of Mustafa's own daughter, speaking from information received from her parents. The date of death recorded in it also is supported by evidence in the case combined to falsify the record on this book."

And then :

"The appeal will therefore be allowed with costs" etc.

20 So, my Lords, in that case, through the trial Court has decided for certain reasons to believe certain parts of the evidence and disregarded the entries in that Nufus Book, the Court of Appeal has set aside the judgment of the trial Court and has given judgment for the other side only on the strength of the entries of the Nufus Book as supported by an Ilam as in this case, and as supported by some part of the oral evidence adduced in that case, in my humble submission the decision in this case is quite different. The trial Court gave judgment in favour of the party who invoked to their help the entries in the Nufus Book and there is ample evidence, including part of the evidence adduced by the respondent, to justify that conclusion to which the learned Sheri Judge has arrived. That was the reason, my Lords, that some time ago I submitted to your Lordships that even if the judgment of the trial Court would have been the other way round, in my humble submission your Lordships would have had no difficulty in upsetting it and allowing the appeal.

30 Now, my Lords, up to this point I finish with the evidence of the respondents, plus the Nufus Book entry, plus the Ilam, and plus the evidence of one witness for the appellant who merely supports the entries in the Nufus Book and the contentions put forward by the respondents. I may just say two words before I go on, that there is again an official document to the effect that Fahreddin, the grandfather of the appellant, had a garden at Lafka of 8 donums in extent known even today as Fahreddin's garden.

40 Now, I shall comment very shortly on the witnesses brought forward by the appellant in the Court below if that is necessary, but I shall first deal with the evidence of the appellant himself to see what lies he has said from A to Z, lies which contradicted admitted facts, and admitted facts which even his learned counsel could not deny, which lies, in my

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humble submission, show beyond any doubt whatever that he never knew anything about Osman's family, and that he went even to the extent of denying that his grandfather had a garden at Lefka, because he knew that if he admitted that fact great harm would probably have been caused to his case. The record at page 50, my Lords, says:

"The date of my father's death is 1909 towards the middle of that year."

And then, the beginning of the last paragraph:

"My relation with the deceased Ahmed Muhiddin and his sister Ayshe Hanim is: These were the children of Fahreddin who was my father's father. Vehbi Eff. and my father were the uncles of Ahmed Ferid. I do not remember Vehbi myself. I was about 17-18 years old when I left Cyprus."

10

Now we can put the date when he left Cyprus from some other passages. Then comes page 51. It is obvious from his evidence that he does not know at all about family tree or relation or anything, but I shall not bother Your Lordships with those details.

"I served in several parts of Turkey and at the end of World War No. 1 I returned to Istanbul in 1919 after having been a prisoner of war for four years. I served again in Istanbul as an assistant Officer of Police. I came across Dede-zade Assim Eff."

20

It is the first witness for the defence who says they met there, and Cadi Ahmet Muhiddin said: "This my nephew from the male side and my heir."

"at a tavern on the shore called Haji Davoud. My compatriots frequented that place and I used to go there — this was about 1½ years after I had become a Policeman."

And then he gives the date as the end of 1925 or beginning of 1926.

And then:

"I was sitting there with Cadi Muhiddin. As Mehmed passed by Ahmed Muhiddin called out to him "Dede-zade, Dede-zade" and he came in and Ahmed Muhiddin pointed me out to him and said: "Are you acquainted"; and Mehmed Assim said; "I know him, he is your uncle's (paternal) son", Ahmed said: "Yes, he is Raji, my heir".

30

My Lords, is it possible for this thing to happen, two people sitting in a coffeehouse, a third who comes from their country passes outside, and he says: This is my cousin, my relative. They will add: "From my paternal side, my heir"? Even in a novel one does not come across such expressions. It is natural to say: "My cousin", all right. "From my paternal side", all right, but also "my heir"? And then, lower down:

"I did not write to Cyprus any letter during my stay in Turkey and did not inform them of my life. I did not even reply to my uncle who had written to me about my properties."

40

My Lords, this passage could have occurred in Horton's inheritance case. Had he said he had written he could have been asked: "Where are the

letters? That was a very easy way out of it. I secluded myself in Turkey, I did not write a letter and I did not even reply to letters asking about properties:

It is very significant that in a case like the present one not a single letter, not a single paragraph, not a single word exists which substantiates the appellant's case, that is to say that he is in no way related with Osman's family.

And then at page 52.....

10 **Chief Justice:** Just before you pass to that, this conversation in Istanbul is supposed to have happened in 1925 or 1926. What was the position then as regards heirs? I understood you to say earlier that that statement cannot have been made.

20 **Mr. Chryssafinis KC:** I was referring to the statement made in the year 1901, but during that time, in any event, not only Muhiddin was alive but Ayshe was alive too, so at any rate part of this property would have passed to Ayshe, so he was not the only heir. But I shall come to that point with regard to Haji Nouri's evidence. But at any rate is it natural that somebody should say to somebody else: This gentleman is not only my relation, but make it clear that he is from the father's side and also make it clear that he is his heir. And suppose it took place, how was the gentleman to remember it after the lapse of all these years and how was he to connect it with the appellant? In this case some hearsay evidence was heard to the effect that the first witness was in Constantinople, people were saying that: "If Raji comes to Cyprus and if he succeeds in this case the first witness for the defence will become a very rich man," that is to say that he would support him financially and he would bring him from Cyprus and if he brings him he would become a real man.

Mr. Clerides: I think you want to refer to Remzi, not Dedezade, because Dedezade is a very rich man.

30 **Mr. Chryssafinis KC:** Sorry, yes. Then at page 52:

Fuad Eff: I object to questions as these being put.

"My father's illness to death is not due to my acquaintance with Vessime. I knew Havva Mulla personally as I was attending her school. I don't know Ayshe Mulla. I knew Haji Nouri Eff. My father's father was Fahreddin, and he is not the one who owned the gardens at Lefka now called "Fahreddin's Gardens".

40 That is sufficient to give to the story weight, and it is in evidence when his grandfather died — his father died in 1909, and he left Cyprus three years after his father died, therefore he ought to have known if his father had a garden at Lefka. So he says on his oath a positive statement to the effect that it is not his grandfather who owned a garden at Lefka, because in my humble submission he fully realised the effect of that part of the evidence that is to say if his grandfather was the one who owned a garden at Lefka he could not be anyone else but Fahreddin Haji Ahmet.

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Mr. Clerides: May I correct my learned friend? He does not say that his grandfather did not own a garden at Lefka, but he was not the owner of of Fahreddin's Gardens at Lefka. There are certain gardens which are called "Fahreddin's Gardens" even now, but he says that: These gardens were not the gardens of my father.

Mr. Chryssafinis KC: I shall read from further down:
"and he is not the one who owned the gardens at Lefka now called 'Fahreddin's Gardens' and the reason why these gardens were so called was not because they originally belonged to my grandfather. I don't know if my grandfather Edip was a Mudir (Sheriff) at Lefka."

10

He did not hear that even from his family.

"It is not true that my grandfather Fahreddin married my grandmother Zuriye when my grand grandfather Hussein Edip was a Sheriff of the Lefka Nahieh nor do I admit that my grandfather had ever been a Mudir."

All these are admitted facts now. I said at the beginning they were admitted facts and they said yes. And he denies all these facts. It is from these details that one can see whether it is a put up case or not a put up case. It is in these details that one will catch him out as to what he knows about this family to which he alleges he was very closely related.

20

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"It is not true that my grandfather Fahreddin originally came from Lefka and that he, after selling his properties at Lefka, moved to Nicosia. It is not true that the house at Omerieh quarter which I knew belonged to Zuriye, had been registered by Hussein Edip in the name of Fahreddin and that from Fahreddin it passed to Zuriye. I don't know if the house I know as belonging to my aunts, had originally passed to them from Hussein Edip. I don't remember if my father's father Fahreddin had a surname — he may have had one. I do not know if Haji Nouri and Vehbi who were my grandfather's brothers had any nickname".

What does he know? Nothing at all.

30

"I do not know from among the people who called Havva Mulla as Havva Mulla as I was too small. I don't know if Vehbi's and Haji Nouri's surnames was Injizade, I hear it now for the first time. I say Haji Nouri, Vehbi and Fahreddin were brothers basing myself on the information I had from my aunts."

And then, last three lines:

"I do not know and I do not remember in which house Vehbi's father Osman lived."

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And then, at page 53:

"When leaving Cyprus I knew that Cadi Muhiddin was a relation of mine as alleged by me; and I knew he was rich and that he had a house. My aunts used to say "Failing Muhiddin this house would be ours" — I did not make inquiries at all about Ahmed Muhiddin's life although I knew I would be his heir".

40

And further down: "I don't know the dates of Ayshe Mulla's death". That is important. "I don't remember Hji Nouri's death".

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"I was then a small boy of 11 or 12".

So if one is 11 or 12 he cannot remember the death of an uncle.

"My father used to say that Haji Nouri had died and left him a small inheritance".

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But he is the only one who says so, all the other witnesses, including their own witnesses, say that all the inheritance was given entirely to Muhiddin. Then, my Lords, at page 54:

- 10 "I don't remember how long Ahmed Muhiddin had stayed in Istanbul". Again he remembers a conversation which took place in 1925 or 1926, but had he said he stayed 3 or 4 months he would have been checked, and whenever one tries to check him he always evades:

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present record)

"I saw Muhiddin Eff. twice, once at Chembali Tash and on another occasion at Galata. I don't remember how long Ahmed Muhiddin had stayed in Istanbul. This was my first and last meeting with Muhiddin after my departure from Cyprus".

That is all about his evidence, my Lords.

- 20 Then, my Lords, I shall deal in one lot for witnesses for the defence No. 2, No. 11, No. 13, No. 14 and No. 15. The evidence of the first appears at page 23. Defence Witness No. 2. That of Defence witness No. 11 at page 40, that of Defence Witness No. 13 at page 41. That of Defence witness No. 14 at page 43 and of Defence witness No. 15 at page 44. The first one of these witnesses is Ali Raji to whom it is supposed that the first respondent made a declaration to the effect that:- If the first appellant is alive he is the only heir. And the other four are the auctioneers who learned a lesson by heart and repeated it. But I may be allowed to cite from part of the evidence of witness No. 13 for the defence, whose evidence is at page 41:-

(Pages 24, 42, 44,
46 & 47 of
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- 30 My partner auctioneer Abdullah said to him: "Don't pay attention to the destruction made by the children. After all she (deceased) has another heir — according to a report by Remzi a certain Raji is shortly coming from Istanbul and that he is the principal heir." Mehmed Atta" (the first respondent) said: "Yes, there was such an heir but he is now dead, my son. I am the principal heir now". Thereupon Chorolik Hassan said: "Come on, we are going to sell" etc.

And then, further down:

"And as Mehmed Arif had asked money for the articles from him Atta said to him: "Come and I will give you money once we are heirs"

- 40 So this passage of his contradicts the previous one, when they had asked for money he says: "No, I will not give you money, we are the heirs".

"I said, "You are not the heirs, Remzi is making every effort and Raji

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will come here for certain; he is the actual heir”.

Then, my Lords, at page 42. I shall cite this short passage with some hesitation because it concerns hearsay evidence, but it is already on the record:

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“The talks in the cafes were to this effect: “Remzi will have a big inheritance; if the man from abroad came and undertook the expenses he would have a gain provided the properties are not already made vakf — but what we know they are vakf.”

That is all, my Lords, about this witness. And then witness for the defence No. 3 at page 23. I shall cite from page 24. He states in the beginning of page 24 that she heard Ayshe telling her that: We did not hear any news from Raji since he left: 10

“She used to say that he was in Istanbul. The Raji she spoke of she used to say was the grandchild of her uncle.”

I cite these passages to show how unreal the evidence is: “If I die it is he who will inherit my estate; once Hussein Raji is living he will inherit my estate.” And then in the cross-examination:

“Ayshe Hanim, used to tell me that Raji was her uncle's son and this she said after Muhiddin Eff.'s death; she also used to say so before. I did not ask Ayshe why inasmuch as she had an uncle' son she should obtain a registration of the shop in her name and mortgage it to me. Atta Bey is the son of Ali Eff.” 20

So, if this witness is believed, it means that Ayshe Vehbi who got all the inheritance was saying right and left: “Though I got it I am not entitled to it because Remzi is entitled”. And we have it that this witness had a grudge against the appellant because she was reported for theft and embezzlement.

And then witnesses for the defence Nos. 4 and 5, one at page 25 and one at page 27, and both relate that about 50 years ago — each one separately — at the request of Muheddin they found some employment for the father of the appellant Ferid. They remember details and they remember also the person they were asked to approach in order to find employment for the cousin on the paternal side of Muhiddin who was also his heir. 30

And then witness for the defence No. 6, appears at page 29:

“Atta said to me: “think over and come”. It is true that Atta said to me: “think over and come” as I said I did not know anything. So this witness, when asked about the family tree said “I know nothing” and then subsequently gave evidence.

My Lords, rather significant is the evidence of witness for the defence No. 9, Ahmed Haji Hafiz Hassan, at page 37. This witness in effect states that 70 years ago Havva Mulla said to him:” “I, “(That is to say Havva Mulla) “Sherif Mulla, Vehbi Eff., Haji Nouri Eff., and Fehreddin Eff., who is abroad, are all brothers and sisters”. She made 40

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that statement 70 years ago and it is remembered, and means and ways were found that this should be communicated to the appellant. And all the same the same witness does not know, even approximately, the date of his father's death.

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Then, my Lords, there is witness for the defence No. 10, Mehmed Arif, at page 39 he states, and his evidence is material in this respect, that he contradicts the auctioneer and Ali Radji. After the death of Ayshe Hanim on the 8th April, 1935 one of the respondents informed him:-

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10 "In the meantime Atta and one of his sons came and informed Court that there was an heir absent in America. In order to take control of the estate of a deceased person a notice is required from the Mukhtar that the deceased has a minor or absent heir. Had a notice been given that Ahmet Muhiddin had an absent or minor heir his estate would have been taken under control."

20 A thing which was never done. And at the same time this witness states at page 40 that he informed Atta, that is to say the first respondent, that Radji was claiming to be an heir, so before the conversation occurred with Ali Raji and the auctioneers the first respondent already knew that Raji was an heir and he knew that he was alive, therefore he would have been a fool to fortify the case of his opponent.

My Lords, the last witness is witness for the defence No. 17, Remzi Yussuf, at page 46:

"My name is Remzi Yussuf. I am from Nicosia. My father is Mulla Yussuf and my mother Mounteha Hanim. Mounteha's father was Fahreddin. Fahreddin's wife was Zuriye Hanim. Zuriye was my grandmother and Fahreddin Eff. my grandfather. I don't remember my grandfather Fahreddin. I heard from my grandmother Zuriye and from my aunts Nessibe and Aliye that my grandfather was Fahreddin".

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30 And then at page 48:

"I did not see the other sisters at all and don't know them. The eldest of the sisters lived in Ahmed Muhiddin's house; but I don't know where the house — the one which was his own, was situated. I don't know what was the name of the sister who lived with Ahmed Muhiddin. I don't know where she stayed before moving to Muhiddin's house. My mother used to take me to Havva Mulla and said to her "aunt", teach Remzi" as I went there for study. I don't know the wife of Haji Nouri; I did not go to his house; he was married. I do not know who his wife was."

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40 It is very significant, he doesn't know anything about the family tree because he himself says that he was related to Fahreddin, who according to the version of the respondents was not the son of Osman but Fahreddin Haji Ahmet. Then:

"When Ahmed Muhiddin died Raji was a Police Officer in Istanbul.

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Which means that he knew that he was an heir.

"I did not write to Raji about Ahmed Muhiddin's death; because I had consulted the Mufti and this was his advice. I had no communication with Raji before either. I wrote to him but received no reply as I did not know his address."

How did he write to him if he did not know his address ?

My Lords, it took me a long time to develop a rather short argument and I must apologize. And I am most grateful to Your Lordships that you always hear the counsel, and as this is my last formal appearance before Your Lordship I should like to state how much your presence will be missed by the members of the Bench. We have had many Chief Justices in this Court, but none has surpassed Your Lordship, and it is very difficult for anyone to do so at any time during my lifetime. I am very sorry for the Courts and for the Service that will miss a great jurist and a great gentleman, as you always were, My Lord.

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Chief Justice:..Thank you.

The Court rose at 1 p.m. and adjourned to 5 p.m. on the same afternoon.

Same Afternoon. 5 p.m.

Court Resumes Hearing.

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Appearances as before.

Mr. Clerides: May it please Your Lordships. My learned friend argued that if the appellant was related to the family of Vehbi it would have been expected that his father would have claimed a share in the inheritance of Ayshe Mulla and of Haji Nouri, and he himself would have claimed an inheritance from Muhettin. The evidence about the death of Ayshe Mulla is given on page 9 by witness Hafiz Mehmet Refet. After saying, my Lords, that Ayshe had dedicated her house he says that Ayshe Mulla died in the house of Muhiddin:

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"Ayshe Mulla died when living in Cadi Ahmed Muhiddin Eff.'s house. At the death of Ayshe Mulla and on the same date I was living in Ayshe Mulla's dedicated house i.e. in the house I now live. It is about 27—28 years since Ayshe Mulla died".

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Now this witness was giving evidence in 1948, therefore Ayshe Mulla must have died in 1920, but the father of the appellant died in 1910, and appellant at the time was not in Cyprus.

The second argument

Chief Justice: Can you tell me now when he left Cyprus and when he came back, roughly, I know it is all here, but just to get it now.

Mr. Clerides: Yes, he left after the death of his father in 1910 and the first time he came to Cyprus was in 1945.

Then the second point is that his father did not claim any inheritance from Haji Nouri who died in 1902.

10 Now, there is no evidence on behalf of the respondent that his father did not get any inheritance from Hji Nouri, but there is evidence at page 53 that his father took inheritance from Haji Nouri, and that stands uncontradicted.

Chief Justice: Where is that ?

Mr. Clerides:..It is at page 53.

Melissas J: In appellant's own evidence, isn't it?

Mr. Clerides: (Cites):

"My father survived Hji Nouri. My father used to say that Hji Nouri had died and left him a small inheritance. I do not know what he had inherited."

And of course Hji Nouri had not left much because in accordance with the evidence at page 66 he had dedicated his house:

20 "I look into Register No. 54, page 66. Here there is a Vakfiedh (deed of dedication) describing the house of Haji Nouri Eff., which, it is put down, will pass on his death to his wife Hadije Hanim, then to dedicator's brother Mehmed Vehbi Effendi and after him to his children and then" and so on.

So the only evidence which is in the record about the inheritance of Haji Nouri is the evidence of the appellant who states that his father took inheritance and there is no evidence to contradict it.

30 Then, third, is the appellant not claiming an inheritance from Muhiddin. Well, it is in evidence that the appellant all the time was absent from Cyprus. There is evidence that the relatives in Cyprus did not know whether he was living or not. He stated that he was not writing letters to Cyprus and therefore the reason that he did not claim inheritance from Muhettin was that he was away from Cyprus. We know from the evidence that Muheddin Eff. died in 1937, and Ayshe Hanoum did not take any steps to get the property until 1940 when she apparently being in need had one house only registered in her name which she mortgaged on the same year, and that appears in the evidence.

Chief Justice: I suppose there was a mukhtar's certificate ?

40 **Mr. Clerides:** With a mukhtar's certificate, and of course the mukhtar could not know whether appellant was living.

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Chief Justice: Would he have said definitely that there was no other heir?

Mr. Clerides: Certainly if he did not know. As a matter of fact on the death of Ayshe the mukhtar of Ayia Sofia gave a certificate, which is Exhibit M.A.2, stating that there are heirs in Turkey. It is a certificate of the mukhtar and he states there is an heir in America and there are heirs in Turkey — generally. I have not got it in my hands, it was not given to me.

Melissas J: It is "In addition to these he also has heirs in Turkey who live." 10

Mr Clerides: Yes.

Melissas J: It is M.A. 1.

Mr. Chryssafinis KC: Maternal relatives.

Mr. Clerides: M A. 1. Of course the mukhtar is not in a position to make a distinction between maternal and paternal, but the fact that on the death of Muhettin, after three years the mukhtars gave a certificate that there are no other heirs in Cyprus or abroad cannot be taken definitely, because the mukhtar speaks about information, he is not supposed to know every person and the relatives of every deceased person, he obtains his information and as he had no information at the time about any other heirs he gave that certificate. It is very common for mukhtar's certificates to be proved to be wrong with regard to the relationship. Anyhow, my Lords. 20

Chief Justice: The only reason why I mentioned that is that it does not seem enough to us that no claim was made on the death of Muhiddin simply because the appellant was absent.

Mr. Clerides: Yes, the appellant was absent from Cyprus, as he was absent from Cyprus he did not know about the death of Muhiddin, his uncle.

Chief Justice: Yes, but that simple explanation does not seem quite enough when the mukhtar has to make enquiries about the relatives who are in the place and put down what he finds out. 30

Mr. Clerides: As a matter of fact many times mukhtars give certificates which are not absolutely correct.

Chief Justice: Yes, but we want something else for your explanation than just the absence of the appellant, I mean that it is not an answer to the question. you have to say the mukhtar's certificate is wrong as well.

Mr. Clerides: Yes, it is. The mukhtar's certificate is wrong, because most probably he did not make full enquiries and from the enquiries he made he did not come to know, though it was possible to know, that heirs were absent from Cyprus. 40

Another point my learned friend made is this, that none of the witnesses, ^{SPOKE ABOUT THE OCCUPATION OF FAHREDDIN. ALL THESE WITNESSES} with the exception of one of them, were born after the death of Fahreddin, and the one, witness 5, who was 82 years old at the time he was giving evidence, must have been 10 years old at the time of the death of Fahreddin, and he did not know Fahreddin at all, if he does not know Fahreddin of course he cannot know about his occupation. And the only two witnesses who knew Fahreddin personally, Hatije Abdurejak, Witness 7 for the Defence, and Hussein Mehmed, witness No. 6, the one describes him as a man wearing a gown and turban — of course he must have been a young boy of 12, and Hatije Abdurejak remembers him. But my learned friend made it a point that the witnesses did not speak about his occupation because he was not a man of Nicosia but he was a man of Lefka. Now the Ilam, if it has any value at all, contradicts the Nufus Book in this respect, because it reads:

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“The esteemed Hussein Edip Eff. son of Moustafa living in the Omeriye Quarter of Nicosia which is the seat of the Governor of the Island of Cyprus, makes a full declaration and acknowledgement by word of mouth in the exalted Sheri Court in the presence of his son-in-law Hussein Fehreddin Eff. son of Elhaj Ahmet of the same quarter”.

“Of the same quarter”, so we have it, if this document is genuine, we have it that in 1279, that is 1863, Fahreddin was resident of Omeriye Quarter. So, if this document is correct.

Chief Justice: Why should it not be correct? You are reverting now to that point?

Mr. Clerides: Well, I will deal with it shortly later, my Lords.

So, if he was from 1279 resident of Nicosia the Nufus book must be incorrect in stating that he came from Lefka.

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Now, while I am on this point, while I touch the Ilam book, I should like to refer your Lordships to Article 1814 of the Medjelle. The Nufus book says that he came from Lefka in 1288, while this document says that he was resident in Nicosia since 1279, if that document is correct.

Chief Justice: Does it say that? That he was resident since then? He was there at the time.

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Mr. Clerides: At the time. He was resident in the same quarter in 1279 my Lords. If he was resident in the Omeriye Quarter in 1279 the Nufus Book must be incorrect in stating that he came from Lefka in 1288. But as I have touched on this Ilam, which I respectfully submit is not an Ilam, because an Ilam is a judgment delivered in a case, this is a simply a “hudjet”, the proper description of it is “hudjet” and hudjets were issued by the Cadi, when people went before him and made a declaration for a transfer or mortgage.

Mr. Chryssafinis KC: My Lords, I am sorry to interrupt, but in

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the second ground of appeal it is described as an Ilam.

Chief Justice: All the way through, right from the start, but does it matter whether it is an Ilam or a hudjet ?

Mr. Clerides: No, it does not matter.

Chief Justice: Is it genuine or is it not genuine?

Mr. Clerides: My respectful submission is this, that in article 1814:

“The judge must have in his Court a book kept in such a manner as not to admit of forgery or fraud, in which his judgments and notes are contained, and he must keep this book with care, but at the expiration of his office he must give this book personally, or by a man in whom he has confidence, to his successor.”

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Now one way to keep a record, and to keep it as genuine and free from fraud, that record must be signed. It does not state before which Cadi the parties appeared, and it bears no signature at all. It is simply a copy, it is not produced from a proper custody because under the law it has to be handed to the Judge, to the Cadi who succeeds, the successor.

Chief Justice: Was the production from the proper custody disputed in the Court below?

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Mr. Clerides: Of course it was not disputed but it goes to the weight of evidence.

Chief Justice: I mean, this is a very beautiful book, you have to admire it, you cannot help it, is it worth nothing? Is it full of forgeries, what is it?

Mr. Clerides: No, my Lords, it is not an original document, a copy may be an artistic copy but it is not an original document.

Chief Justice: It is a record of things done.

Mr. Clerides: A record, but it does not state by whom it was made, it does not state therein by whom it was made, before whom it was made, but it simply states that certain persons appeared and it gives the names of certain witnesses without any signatures at all.

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Chief Justice: I do not think anyone could fail to treat a book like that with great respect

Mr. Clerides: Yes, my Lords, I see that this is an artistic copy but it is not an original. If a clerk.

Chief Justice: It purports to be a record of what occurred in the Court and which had to be recorded?

Mr. Clerides: Yes, my Lord.

Chief Justice: . . . And it is, as I say, most beautiful. I cannot

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refrain from expressing my admiration for it.

Mr. Clerides: But the question is, is this an original document. Assuming a copy written artistically is produced before the Court as a specimen without any seal or signature, what weight could you put on it?

Chief Justice: If you say that it should have a seal or signature according to some rules and has not, that is another matter.

Mr. Clerides: Section 1814 of the Medjelle speaks about a record and what is meant about keeping a record, an unsigned record. Because a record must be signed by him who made it. And then we have this
10 record which does not appear to be an original document.

Chief Justice: It purports to be the record.

Mr. Clerides: It purports.

Chief Justice: And it is produced from the proper custody?

Mr. Clerides: No. it is not from the proper custody, because the clerk of the Evcaf Department has produced it whereas in accordance with Art. 1814 it should be kept by the Sheri Court.

Melissas J: Since some time in 1927 the Sheri Court is part of the Evcaf Department.

Mr. Clerides: The present Sheri Judges were called Sheri Judges
20 instead of Cadis in 1929, but the Sheri Judge succeeded Cadi. And the Cadi should deliver the records of his court to his successor, and the successor to his successor, and this was not produced, it should have been in the possession of the Sheri Court and it was not produced from the Sheri Court but from the Evcaf Office, it may be simply a copy.

Chief Justice: It is an old record, full up?

Mr. Clerides: It is.

Chief Justice: The record which is in use is no doubt passed from one judge to another, the records which are filled up are put somewhere else and it was probably put in the Evcaf.

Mr. Chryssafinis KC: The Sheri Court up to last April—May was
30 functioning in the Evcaf Department and these books were kept in the same building.

Chief Justice: I do not think you are making much of this?

Mr. Clerides: My point is this, first of all it does not appear to be an original record, because it is unsigned and unsealed and secondly that it is contradicted, as I have pointed out to your Lordships, by the Land Registry itself, because if this property was sold to Fahreddin in 1279 then this Land Registry shows that this property came to Zuriye from her father Hussein Edip.

Now, my learned friend dealt with the evidence of Hatije Abdurezak,

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witness 7 for the defence, and he insisted that she stated that Fahreddin was the son of Haji Ahmet. But Hatije in her evidence first of all stated that Hji Ahmet. was a relation of Vehbi, and then she said that she had never heard that Fahreddin was the son of Haji Ahmet. Now it appears in the record that although she said first that she never heard that Fahreddin was the son of Haji Ahmet she stated that Fahreddin was the son of Haji Ahmet who was a relation of Vehbi, but she does not know what relation he was. It may be that an old woman of 92/93 years old when she was giving evidence, and although she stated that she never heard that Fahreddin was the son of Haji Ahmet, it may be that in the course of the cross-examination some mistake occurred. But she insists that there was one Haji Ahmet who was a relation of the family but she did not know the exact relationship. 10

Chief Justice: We were told today the circumstances in which she made that statement, you remember.

Chief Justice: Yes, I remember.

Chief Justice: Your colleague was there at the time, does he dispute it?

Melissas J: Essad Bey was present when she was giving evidence, does he dispute it? 20

Mr. Clerides: It does not appear on the record that he disputed it.

Chief Justice: I do not think you have got quite the question I am asking you. We were told this morning that at a certain point in this old lady's evidence she was reminded that she was getting old and was going to die, as I believe she has since done, and that it would be important for her to tell the truth. Then she said that Fahreddin's father was Haji Ahmet. Now, does your colleague dispute that description of what we heard? Is that true?

Essad Bey: Yes it is true.

Chief Justice: All right then, we know what the truth is. 30

Essad Bey: Yes but the woman was very old and she was tired because the cross-examination lasted more than one hour and when Fadil Bey was cross-examining her he shouted at her several times and she was very tired and to get release from him she said yes.

Chief Justice: That is your comment on what occurred?

Essad Bey: Yes, what I remember.

Chief Justice: But what occurred is what we were told this morning occurred?

Essad Bey: Yes

Mr. Clerides: Now I will deal shortly with the Nufus Book, my Lords, and I will state simply this: It is apparent that there are four or 40

five mistakes in this Nufus Book. In the first place the name of Hussein Edip is not correctly stated. In the second place the name of his father is wrongly stated and then it was corrected. In the third place Saime is put in a separate column as his wife. The fourth mistake is that the name of Fahreddin was written Mehrettin. The fifth mistake is that in giving the time of the death of Fahreddin as being 1293 in the column of the general number it refers to No.3572 which is a blank column, while in the case of Edip Hussein it refers to 3573 which is the column under which his name is. Then, again, another mistake is this. If Ahmet Farid and Mehmet are the children of Fahreddin why are they placed in the column of Saime? In the column: His wife Saime daughter of Haji Hussein you will see two names, Mehmet and Ahmet Ferid. Now we know from the evidence that Mehmet and Ahmet Ferid are the sons of Fahreddin and not the children of Saime.

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Melissas J: There must be a mistake because the second portion refers to those originally resident in the quarter and the second portion refers to those who came later.
ADDITIONAL POPULATION, THOSE WHO CAME, THE FIRST PORTION REFERS TO

Mr. Clerides: Yes, but Fahreddin is in the column of Hussein Edip. Fahreddin is put in the column of Hussein Edip.

Melissas J: No, no. There are two different portions.

Chief Justice: It all relates to the same house, that is the thing, isn't it? Some lived there before and some came after.

Mr. Clerides: Well, it could not relate to the same house because it gives a different number.

Chief Justice: Does it?

Mr. Clerides: Yes, because 3573 is for Edip Hussein and 3574 is for...

Chief Justice: Yes but the number of the house is 14 and there is no different number down below.

Mr. Clerides: There is no different number, but we know from the Land Registry Office that Saime had a different house, and we know from the evidence that Saime had a husband, Haji Ahmet, and we know from the evidence that Saime had a son Murid.

Melissas J: The reason they were put there is that they were dependents of Fahreddin.

Mr. Clerides: If they are dependents they should have been put in the column in which Fahreddin is and not in the column which shows Saime.

Melissas J: Saime is again shown as a dependent, if that was the practice.

Mr. Clerides: If Saime is intended to be shown as a dependent of Hussein Edip that is wrong, because there is no evidence that Saime was ever the wife of Edip Hussein, and the Land Registry record shows that

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her husband was one Ahmet or Haji Ahmet and the Land Registry Office further shows that the house of Saime passed to her son Murid.

Chief Justice: The main importance of this Nufus Book is that it is sought to show that the father of Fahreddin was Haji Ahmet, shall we get much further with that if we go round chasing Saime, whoever she may be?

Mr. Clerides: Well, my Lord, my argument is this, once the name of Hussein Edip was wrongly stated and his father's name was wrongly stated and corrected, and once Saime was said to be — in the Nufus Book — the wife of Hussein Edip, although she was not his wife. . . .

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Chief Justice: But when you say his name was wrongly stated, it is stated as Hussein Edip in one place and Edip Hussein in another?

Mr. Clerides: It is not stated, only as Edip Hussein.

Chief Justice: It is stated so in this Ilam.

Mr. Clerides: If he was Hussein Edip then the Nufus Book is incorrect in stating that he is Edip Hussein, and if the person who prepared this record put as father of Edip Hussein, Abdulla, he made that mistake which he corrected and put it as Moustafa Agha, why could he not make a mistake and put Haji Ahmet and not discover that mistake to correct it? That is my submission, this Nufus Book in my respectful submission is full of mistakes. There is ample evidence that this house passed to Zuriye and that Zuriye was the wife of Fahreddin. It was the duty of the clerk who prepared this Nufus Book to put all the residents in that record, and Zuriye's name does not appear in the record at all. So, in my respectful submission, that Nufus book, in view of the apparent mistakes, cannot be correct and cannot be relied upon. And in view of that and in view of the oral evidence which has been produced of persons who knew Fahreddin personally and of persons who were in the family for years and who knew the relationship, this record cannot be relied upon. And a good number of witnesses who were in the family spoke about the relationship, spoke about Fahreddin being the brother of Vehbi and Haji Nouri and all the other sisters, while this record which was prepared from information and which is proved to be incorrect on certain points in my respectful submission cannot be relied upon. It states that Hussein Edip came from Lefka. Well, with regard to that point, my Lords with regard to the property at Lefka, I should like to refer you to the notes. It is the evidence of Mehmed Kemal at page 65.

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"My name is Mehmed Kemal, I am an L.R.O. clerk. I have the Land Register for Lefka with me. I produce the oldest record of the property now standing in the name of Rifat Salih Hji Salih. It is Register No. 1, page 34, Serial No. 589 locality: garden. It passed from Fahreddin Eff.'s wife Zuriye Hanim to Haji Salih Eff. son of Haji Mulla Osman. The property is garden 8 donums in extent.

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The most ancient proprietors of this property that Land Registers

can give are Fahreddin and his wife Zuriye. This registration was made in this book from the "Yoklama" (Roll) Books kept in Turkish times, The "Yoklama" (Roll) for the Lefka lands was made on the 18.8.1288 I produce a certified search issued in respect of this registration No. 1244 dated 19.7.46 — marked M.K. 1/26.3.49. I had been at Lefka as an L.R. Clerk, and this is how I know the garden in question and because I had made its local inquiry. This locality and garden are called by the Lefka people as 'Fahreddin Eff.'s garden'."

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10 Now it appears my Lords, that the family of Fahreddin and his wife Zuriye had a garden at Lefka, and they had a garden at Lefka which, after the death of Fahreddin passed to Zuriye and Zuriye sold it. Now, my learned friend suggested that Fahreddin sold his property at Lefka and came to reside at Nicosia.

Mr. Chryssafinis KC: I never said so; he had property at Lefka.

Mr. Clerides: No, my learned friend commented on the evidence of the appellant who stated that he did not sell the property at Lefka, his grandfather did not sell his property at Lefka in order to come and reside at Nicosia.

20 **Mr. Chryssafinis KC:** I stated, if I remember rightly, that the appellant in his evidence in the court below said that Fahreddin — it is not Fahreddin's grandfather who ever owned property at Lefka.

Chief Justice: The question was whether Fahreddin was a Lefka man or a Nicosia man and the suggestion was that he was a Lefka man.

30 **Mr. Clerides:** Yes, my Lords, but the record shows that the property at Lefka was not his own property, it was the property of himself and his wife. And this property remained the property of the family after the death of Fahreddin and it was sold by Zuriye. So the fact that Fahreddin and Zuriye had property at Lefka is not evidence that he was a Lefka man, as the Nufus Book states which was made at a much later date than the Ilam, though the Ilam states that Fahreddin was of the Omeryeh quarter of Nicosia. These two documents contradict themselves and in my respectful submission, in view of the evidence of persons who were in the family and knew about the family very well, these documents cannot be relied upon in this case just because they are recorded.

That is all I have to say in this case.

Chief Justice: We will give judgment at 10.30 to-morrow.

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Supreme Court Dismisses Appeal With Costs

Sheri Appeal No. 55

In the Supreme Court of Cyprus.
(On appeal).

Before: Sir Edward Jackson, C. J. and M. Melissas, J.

In the Sheri Tribunal of Nicosia—Kyrenia. Act. Nos. 14/45 & 41/45.

T I T L E

This is an appeal from a decision of the Sheri Court of Nicosia in two consolidated actions arising out of claims by different persons to be entitled to succeed to the estate of one Ayshe Vehbi who died unmarried in April 1945. 10

In one of these actions the respondent Mehmed Ata Ali Ismet, of Nicosia, claimed that he and four other persons were the sole heirs to the estate of the deceased Ayshe because they were the only living relatives of one Vehbi Effendi by reason of their descent from the father of his wife. Vehbi Effendi had a son named Ahmed Mouheddin who died unmarried in 1937 and a daughter, the deceased Ayshe Vehbi, who as already stated, died in April 1945, and whose estate is now in dispute. It does not appear that Vehbi Effendi had any other children. Ahmed Mouheddin was a man of some property and his estate descended to his sister, Ayshe Vehbi, as sole heir, in the absence of other claimants. The estate in dispute is said to be worth between £8,000 — £10,000. 20

The claim of the respondent is accordingly based on relationship to the mother of the deceased Ayshe and could not therefore prevail against a claim based on relationship to Ayshe's father.

In the second of the two consolidated actions, the appellant Hussein Radji Ahmed Ferid, now of Nicosia, claimed to be the sole heir of the deceased Ayshe Vehbi by reason of his descent from one Fahreddin, the brother, as he said, of Vehbi Effendi, the father of the deceased Ayshe. It appears that he also claimed, on the same ground, to share in the estate of Ayshe's brother, Ahmed Mouheddin, who, as we have already said, died in 1937. We have also said that the whole of Ahmed Mouheddin's estate descended on his death to his sister Ayshe Vehbi, in the absence of other known heirs, and the appellant's claim appears to imply that this should not have happened but that a part of Ahmed Mouheddin's estate should have descended to him. 30

There is no dispute about the relation of the respondent, Mehmed Ata, and the four other persons included in his claim, to the wife of Vehbi Effendi, ^{THE FATHER OF AHMET MOUHEDDIN AND AYSHE VEHBI.} But the respondents dispute the relationship of Fahreddin, the appellants' grandfather, to Vehbi Effendi. They said in the lower court, and have maintained here, that Fahreddin was not the brother 40

of Vehbi Effendi or any relation at all. It is agreed by both sides that Vehbi Effendi's father was named Osman and the respondent's case is that Fahreddin's father was not Osman but one Hadji Ahmed.

Those were the conflicting claims between which the Sheri Judge had to decide in the two consolidated actions and it will be seen that it lay with the appellant to establish a superior claim, by relationship to the deceased Ayshe Vehbi on the paternal side, against the undisputed claim of the respondent, based on relationship to the deceased on the maternal side.

10 The dispute before the Sheri Judge was therefore one of fact alone. The appellant's claim rested solely on oral evidence unsupported by documentary evidence of any kind. The respondents produced several documents to disprove the appellant's claim, as well as the oral evidence from persons who might have been expected to know that Vehbi Effendi had had a brother named Fahreddin if this had been the fact. These witnesses did not know of any brother of Vehbi Effendi who was so named, though they knew of another brother, named Hadji Nouri, and of several sisters.

20 Among the documents produced by the respondent to disprove the appellant's claim that Fahreddin was the son of Osman and therefore the brother of Vehbi Effendi, was an entry in a Nufus book which purported to record the names of the persons who were living at a particular house, No. 14, in the Omeriah Quarter of Nicosia, at the time when the record was made, and certain particulars about them. The entry is written in Arabic characters but was interpreted for us under oath.

30 This record divided the residents of the house into what it called "the original population" and the "additional population". Among the latter the Nufus book recorded, as living in the house No. 14, a man who, in one part of the record is called Mehreddin and in another Fahreddin and who came to that house from Lefka in the Mohammedan Year 1288 and had been born at Lefka in the Mohammedan Year 1246. In the place where this man's name is written as Mehreddin he is recorded as the son of Hadji Ahmed. The respondents say that though the name is written differently in the two entries concerning this man in the Nufus book, both entries refer to the same person, the Fahreddin with whom this case is concerned, and that the Nufus book is therefore evidence that Fahreddin's father was Hadji Ahmed and not Osman. We may note here that the difference between the spelling of the name in the one entry and in the other consists solely of the absence in the one entry and the presence in the other entry of two dots over the first letter. The entries, both of the names and of other particulars, appear on one line and no reason was suggested for thinking that the entry might relate to two different people. We shall refer later to what the appellant says about that entry in the Nufus book.

40 Another piece of documentary evidence produced by the respondent was Sheri Register No 51 purporting to record transactions in the Sheri

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Court of Nicosia during a period which included the Mohammedan Year 1279 (1863).

This register was produced from the custody of the Evcaf Office in which it appears that the old registers of the Sheri Court are kept. It is written in Arabic characters and a translation was put in evidence in the Court below of a particular entry on page 112 of the register. This entry purports to record the sale of the house No.14, Hizir Street, in the Omerie Quarter of Nicosia, by the owner, Hussein Edib Effendi, the son of Moustafa, to Hussein Fahreddin Effendi, the son of El Hag Ahmed, in the year 1863. We were told by the sworn interpreter that El Hag is the Arabic form of the Turkish Hadji. The respondents say that this entry in the Sheri Register supports the entry in the Nufus book and is further documentary evidence that the father of Fahreddin was Hadji Ahmed and not Osman. The appellant contests the reliability of this Sheri Register as well as that of the entry in the Nufus book.

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The oral evidence produced by the appellant included statements of a number of witnesses to the effect that Fahreddin, the appellant's grandfather, was the full brother of Vehbi Effendi, the father of the deceased Ayshe, and of Hadji Nouri. Fahreddin died in or about the year 1910 and only two of the appellant's witnesses were said to have known him. One of these was a lady named Hatidje Abdurazac who was 92 or 93 years old when the actions were tried in the Sheri Court about five years ago, and is now dead. A dramatic incident occurred during the cross-examination of this witness. She was reminded by the respondent's counsel, Mr. Fadil Korkut, that she could not have long to live and might therefore wish to be certain that what she told the Court was the truth. Thereupon, after brief reflection, she contradicted her previous evidence and said that Fahreddin was the son of Hadji Ahmed and had spoken of Hadji Ahmed as his relation.

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The other witnesses called by the appellant on this particular point spoke of what they had heard from Vehbi Effendi's relations.

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The appellant also produced witnesses who spoke of an occasion in Istanbul between 1926 and 1928 when Ahmed Mouheddin, the rich man of the family, had acknowledged the appellant, who was present at the conversation, as his heir. According to the appellant, Fahreddin would have been Ahmed Mouheddin's uncle. There was other less direct oral evidence for the appellant to which we need not now refer.

It was clearly necessary for the appellant, if he was to succeed in his claim that he should destroy the evidence of the Nufus Book and the Sheri Register. In the Sheri Court the appellant's counsel strongly objected to the production of the Nufus book by way of rebutting evidence and it was necessary for the respondent to obtain an order from this Court that it should be produced. Even in the grounds of appeal the Nufus book as well as the Sheri Register are described as inadmissible documents. But, at the hearing before us, the appellant's counsel himself produced the case of Houriyeh Moustafa and others v. Ahmed Ramadan and others (Cyprus Law Reports volume 17, page 33). That case discussed the

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admissibility of Nufus books in evidence for inheritance cases and the weight to be attached to them. The case was heard in 1941 and one of the members of the Court was that distinguished Turkish judge, now retired, Mr. Justice Halid. In view of that case it was clearly impossible to contest the admissibility of the Nufus book and the appellant's counsel frankly abandoned that allegation. Thereafter he confined his comments to the weight to be attached to the particular entry in the Nufus book which had been produced, on the ground of what he alleged to be mistakes in it.

10 The extract from the Sheri Register was attacked, both in the Sheri Court and before us, not on the ground of inadmissibility, but on the ground of weight. It was said that the entry was not an original document but purported to be no more than a record of a transaction which had taken place in the Court and that it did not even purport to have been signed or sealed either by the Sheri Judge or by the person who made the record.

20 The book contained a very large number of records of transactions in the Sheri Court and there was no evidence that any of them bore any signature or seal or that the law under which the records were kept, Article 1814 of the Mijelle, required the presence of a signature or seal on any of the records. The Register is a most remarkable book, beautifully and uniformly written and the age of the particular entry with which we were concerned is nearly 90 years. No one who looks at the Register could fail to appreciate that it is a record which should be treated with considerable respect. At the time of the transaction with which we are concerned, 1863, no one conceivable could have had any interest in misrepresenting the paternity of Fahreddin and the same observation applies to the entry in the Nufus book. Even if there is any
30 obscurity about certain of the particulars in that book there can be none about its records to the paternity of Fahreddin.

One of the grounds upon which the respondents attack the appellant's claim was that there had been occasions when, if he had really been the grandson of Fahreddin and a great grand-son of Osman, he would have claimed to share in the estates of his paternal relatives who had died. The most important of these occasions was the death of Ahmed Mouheddin. in 1937. The appellants' explanation of the fact that he had made no claim to share in Ahmed Mouheddin's estate was that he had been absent in Istanbul very soon after his grandfather's death in 1910 to 1945 and knew nothing of what was happening to his relations.
40 It will be remembered however that the appellant had said that Ahmed Mouheddin had acknowledged the appellant as his heir, in the presence of the appellant and other people, in Istanbul at some time between the years 1926—1928. The appellant is now about 59 years old so that at the time of Ahmed Mouheddin's acknowledgement of him as his heir he must have been about 35 and it would seem to be only human nature, in any part of the world, that if a man of that age knew that he was the heir of a rich relation, he would thereafter take a certain interest in that relation's activities and possibly even make discreet enquiries of

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members of the family as to the state of that relation's health. The appellant was apparently too unworldly to do anything like that and he says that he did not know of Ahmed Mouheddin's death until he returned to Nicosia after the death of Ahmed Mouheddin's sister, Ayshe Vehbi, whose estate is now in dispute.

When Ahmed Mouheddin died a certificate was given by the Turkish Mukhtar and two Azas of the quarter in which he lived that his sole heir was his sister Ayshe Vehbi and that there was no other heir either in Cyprus or abroad. The respondents make the obvious comment on this peculiar behaviour on the appellant's part. They say that if he had a claim to be the heir of Ahmed Mouheddin during the life of Ahmed's sister she could easily have exposed his lack of relationship to either of them.

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We think we have now said enough about the evidence on both sides to indicate the issues with which the Sheri Judge was faced and we may perhaps repeat here that there has never been any dispute about the respondent's relationship to the deceased Ayshe on the maternal side. The burden therefore has lain throughout on the appellant to establish his superior claim. If there could be any reasonable doubt that he had established it the necessary consequence would be that his claim should be dismissed.

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The judgment of the Sheri Judge, after hearing a mass of conflicting oral evidence, and after considering a number of important documents, consists of less than 7 lines of type. He simply states that, having considered the evidence and the exhibits, he gave judgment in favour of the respondents.

In the absence of any indication by the Sheri Judge of the considerations which led him to that conclusion, or of his view on the credibility of any of the witnesses whom he had heard, we thought at one time that it might be necessary to get from him some further indication of the processes by which his conclusion had been reached. But the further the argument before us was developed the more convinced we became of the bareface falsity of the appellant's claim and of the soundness of the conclusion which the Sheri Judge had reached upon it.

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We therefore feel no hesitation in declaring our opinion that this appeal must be dismissed with costs.

(Sgd) E. St. J. Jackson, C. J.
M. Melissas, J.

Nicosia, 18/7/1951.

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Application for leave to appeal to the Privy Council

Sheri Appeal No. 55

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29th September, 1951. 10.30 a.m.
In the Supreme Court of Cyprus.

T I T L E

Application for leave to appeal to the Privy Council from the judgment of the Supreme Court, dated 18th July, 1951.

Coram: Sir Edward St. J. Jackson, C. J. & Melissas J.
(Shorthand note of the proceedings ordered to be taken).

For the Applicants: Essad Bey with Mr. Emilianides.

For the Respondents: Fadil Korkut Bey with Mr. G. Polyviou.

Essad Bey: My Lords, this is an application on behalf of the Plaintiff Hussein Raji Ahmed Ferid of Nicosia to pray from Your Lordships' Court leave to appeal to His Majesty in Council from a judgment in the Sheri Appeal No.55 which was delivered on the 18th July, 1951. The subject matter is over £ 300 my Lords.

Chief Justice: It is an appeal as of right. (To Mr. Emilianides) Can you help, just to save time (To Mr. Essad) I do not mean that we do not want to hear you. But if there is anything which Mr. Essad does not catch if you will kindly explain it it will save time. It is an appeal as of right, the amount involved is £ 8.000, I think you said, did you?

Essad Bey: Yes my Lord.

Chief Justice: All right.

Essad Bey: At the same time, my Lords, an order for a stay of execution to be entered if leave to appeal is granted.

Chief Justice: What do you base that application on?

Essad Bey: My application is based, my Lords, on Order in Council, 1927, clauses 3, 5, 6 and 7, and also

Chief Justice: Let us talk about the stay of execution, shall we?

Essad Bey: And also clause 7, my Lord, and also the Statute Laws of Cyprus, 1949, Vol. 1, chapter 12, section 18.

Chief Justice: Is this about the stay of execution?

Essad Bey: No, my Lord, it is general, about the appeal. Appeals to Privy Council. When the amount is exceeding £ 300 "an appeal shall lie to His Majesty in Council".

Chief Justice: There is no dispute about that, is there?

Mr. Polyviou: No, my Lord.

Essad Bey: That is all, my Lord.

Chief Justice: What right have you to a stay of execution?

Essad Bey: As a matter of fact, my Lord, the respondents are absent from Cyprus now and as a matter of fact they received the money which is inherited from the Sheri Court, from the Infant's Estate and if they left something in the Sheri Court, and in order to save time, my Lords, if there is any money at all in the Sheri Court they get their shares from the Sheri Court already and they left Cyprus.

Chief Justice: The estate has been distributed?

Essad Bey: With regard to their shares, my Lords. There are some

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others but mostly they received. It was distributed, yes.

Chief Justice: Mostly the estate has been distributed?

Essad Bey: Yes, my Lord.

Chief Justice: Have the respondents in the case, the respondents in the appeal, have they received their shares?

Essad Bey: Yes, my Lord. Except....

Chief Justice: What is the point of a stay of execution even if you have any right to it?

Essad Bey: My Lords, we ascertained that they received that money after the application. 10

Chief Justice: Quite. But what right have you to ask for a stay of execution in this case?

Essad Bey: Of course we suppose that if we gain the case there is no remedy to satisfy our claim, because already they left Cyprus. But of course we leave the point to Your Lordships' Court.

Chief Justice: Yes, but before you leave it with us you must give us what assistance you can about it and on what clause of this Order in Council you base your application for a stay of execution. You referred to clause 7?

Essad Bey: Yes, my Lord. "Where the judgment appealed from 20
requires the Appellant to pay money or perform a duty".

Chief Justice: Is it a judgment of that kind?

Essad Bey: It is not.

Chief Justice: Very well then, how does Clause 7 apply?

Essad Bey: It is not exactly, my Lords, but it is related to the money value of the property, in this section it speaks about the money, but it is not direct money but indirect money.

Chief Justice: But that clause speaks about a case in which the judgment appealed from requires the appellant to pay money and perform a duty, and this is not a judgment of that kind. 30

Essad Bey: It is not direct but it is indirect.

Chief Justice: How is it? It is no use arguing about it, it is not a judgment of that kind, either directly or indirectly.

Essad Bey: As it pleases your Lordships.

Chief Justice: It is not as I suppose, that is as the Order in Council says.

Essad Bey: My allegation, my Lords, is that the Court has inherent power and we consider it that this inheritance question is regarding an

estate which consisted at the time of immovable and movable property, money deposited in the Sheri Court.

Chief Justice: All right. What about the amount, and within what time are you prepared to furnish it under Clause 6?

Essad Bey: Three months.

Chief Justice: You want the maximum time to find the security and, no doubt, the minimum amount of security. What amount do you purpose?

Essad Bey: £ 300.

10 **Chief Justice:** You propose £ 300, within what time?

Essad Bey: Three months, my Lord.

Chief Justice: How long to prepare and despatch the case?

Essad Bey: Four months, my Lord.

Chief Justice: That is all, isn't it?

Essad Bey: Yes, my Lord.

Mr. Korkut: My Lords, the applicant is not entitled for a stay of execution under clause 7.

Chief Justice: He has admitted that he does not come under that.

20 **Mr. Korkut:** With regard to the petition itself, my Lords, there are two irregularities in the petition. One is that the notice has been given to my office and to the office of Mr. Poliviou whereas the Order in Council says: "Shall give the opposite party notice of his intending application". Clause 5.

Chief Justice: Well, have you received notice?

Mr. Korkut: Of course we received notice, but I submit it is an irregularity.

Chief Justice: Yes, but are you making any point of it now? You have received the notice and you are here.

30 **Mr. Korkut:** Yes, but my client is outside Cyprus and it is a final judgment and we are no longer retained for the purposes of the appeal, we appear under protest in regard to this point. Had my client been in Cyprus there was no question of objection.

Chief Justice: There cannot be any question of jurisdiction. We have given a judgment and there a right of appeal to it.

Mr. Korkut: Yes, but with regard to giving the notice, this is my submission.

Melissas J: Have you been instructed to appear to-day on behalf of your client?

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Mr. Korkut: We appear under protest.

Melissas J: Have you been instructed to appear?

Mr. Korkut: No The man is in Turkey, we do not know his address.

Chief Justice: There are several, aren't they?

Mr. Korkut: The respondent is practically one, the others are co-heirs accepted by my client in his original action, and all of them including him, all of them are outside Cyprus.

Chief Justice: What do you ask? That we should put this off until you can get in touch with them?

Mr. Korkut: I think so, they are entitled at any time to make this petition after serving notice to the persons interested. One of the co-heirs is in the United States of America and the others are in Turkey, and my client who is practically the respondents, left Cyprus before this petition was filed. 10

Chief Justice: You appeared for him in the Court below, didn't you?

Mr. Korkut: I did, my Lord.

Chief Justice: So what more could the applicants have done than give you the notice?

Mr. Korkut: This is my submission, my Lords.

Chief Justice: Well, I am asking you, what more could they have done than give the notice to you? 20

Mr. Korkut: They could serve the notice to the respondent personally in the same way as when they bring an action against a person who is absent from Cyprus.

Chief Justice: If they had the position would have been just the same as it is now, wouldn't it?

Mr. Korkut: With a regular service and with a proper instruction

Chief Justice: Well, what do you ask?

Mr. Korkut: I think, my Lords, having already notified their objection they are within their rights, they must serve a notice to the respondent. 40

Melissas J: You did not inform the other side that you would not accept service?

Mr. Korkut: No.

Chief Justice: What is the other irregularity?

Mr. Korkut: The other is that the affidavit supporting the petition is not made by the appellant himself but by a third person. That third person does not state in his affidavit whether he is actually an agent or not and.

Chief Justice: Do you mean that it is possible that this application is not being brought by the persons who should bring it?

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Mr. Korkut: Not as far as that, but I am relying upon the practice of the Privy Council.

Chief Justice: What does the affidavit amount to, anyway. There is nothing in the application that we do not know.

Mr. Korkut: Yes, but we do not know that he is an agent, he must state in his affidavit whether he is really an agent. This is according to the remarks of the Privy Council Practice, Bentwich.

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10 **Chief Justice:** Yes, but do you say that this application is not being made by the right person?

Mr. Korkut: If not so far as that, it is irregular, because the deponent has not stated in the affidavit that he is an agent and how he obtained the informations he gives.

Chief Justice: But there is no question that the information is correct?

20 **Mr. Korkut:** Regarding me it is correct, but regarding the deponent he ought to state in his affidavit that he received this information from such and such a ground, and that he is an agent because he has a power of attorney, or something like that. I cite, my Lords, Privy Council Practice, Bentwich, published in 1926. 2nd Edition, on page 217 it says:

“Where the petitioner is represented by an agent, the said affidavit shall be sworn by such agent and shall, besides stating that, to the best of the deponent’s knowledge, information, and belief, the allegations contained in the petition are true, show how the deponent obtained his instructions and the information enabling him to present the petition”.

This is what I rely on in making this submission to my Lords.

Chief Justice: Yes, quite, but what are the allegations in the petition?

30 **Mr. Korkut:** The allegations are correct, I do not say the contrary. For the sake of practice he ought to depose in his affidavit that he is an agent and that he obtained the information from such and such a place.

Chief Justice: That may be, but is there any substance in this point?

Mr. Korkut: No it is only practice, my Lords.

Chief Justice: No doubt you are right, but is there any substance in it?

Mr. Korkut: No. But there always remains the doubt that he may not be the proper agent.

Chief Justice: Yes, but of what importance in this particular case is that affidavit at all?

40 **Mr. Korkut:** None.

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Chief Justice: So what does it matter?

Mr. Korkut: It does not comply with the practice.

Chief Justice: True, but in substance?

Mr. Korkut: No, not for the substance.

Chief Justice: . . What have you got to say on the other points, the proposals of the applicant that he should find security up to £ 300 within three months and that he should have four months for the preparation and dispatch of the record?

Mr. Korkut: The amount of security, I think I am entitled to claim the maximum, my Lords. Taking into consideration the irregularities I mentioned and the amount of the estate and absence of the respondents from Cyprus for the present.

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Chief Justice: Time?

Mr. Korkut: With regard to the time I think I am entitled to claim the minimum because this action, the original action was instituted in 1945. It is an old case.

Chief Justice: I am speaking now for the time of finding the security.

Mr. Korkut: I want the minimum time.

Chief Justice: Well, there is not a minimum time, there is a maximum time but not a minimum. He asks for the maximum. Three months.

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Mr. Korkut: I submit that three months is too much, about two months is sufficient.

Chief Justice: You are prepared to give two months?

Mr. Korkut: For the security, it is practically maximum two months.

Chief Justice: If the maximum is three months?

Mr. Korkut: It is in the law, I say that the maximum two months is sufficient for them to ask for security.

Chief Justice: Yes, but what do you ask for. You agree in fact to give him two months to find security for an amount which you suggest should be £ 500 ?

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Mr. Korkut: Yes, my Lord.

Also for the time of the preparation I do not think the maximum is fair.

Chief Justice: Well, there is no maximum there. The time, according to the rules, is supposed to be what is reasonable in the opinion of the Court, having regard to the circumstances of the case. He asks for four months.

Mr. Korkut: I think it should be reduced, 4 months is more than reasonable time. Two months I think is sufficient for both

Chief Justice: That is to say running from to-day?

Mr. Korkut: From to-day, yes my Lords.

Chief Justice: So that you give him the same time to find security as to prepare and despatch his record?

Mr. Korkut: Yes, my Lord, that is my submission.

Chief Justice: Well, can he do it in the two months?

Mr. Korkut: Anyhow, four months is more than reasonable time.

10 **Chief Justice:** Yes, but you know what is possible about these things here, you know the practical steps that have to be taken; can they be done in two months?

Mr. Korkut: If they work diligently.

Chief Justice: Has it ever been done in two months? I do not know because I have not been charged with the actual steps of preparing records for despatching to England.

Mr. Korkut: Well, if we say three months I think it is sufficient for preparing, for the security two months.

20 **Chief Justice:** A good deal more work has to be done to prepare a record and despatch it to England than to get security. At least work of a different kind. A good deal may be required to get security but it is a different kind of work.

Mr. Korkut: Yes, my Lord.

Chief Justice: Anything to say Mr. Essad?

Mr. Essad: My Lords, about the objections of my learned friend about the address for service. He continued the address of service, we were not aware that it had ceased to be an address of service.

Chief Justice: How do you know it is continuing to be, did you have any correspondence with him?

30 **Mr. Essad:** No notice was given, my Lords, to that effect. And there is no opposition also.

With regard to the time, my Lords, it is the business which will be done by the Registrar of the Supreme Court which is very hard and difficult, and therefore the time of four months even is not reasonable. It is not sufficient.

Chief Justice: For the sake of the Registrar?

Essad Bey: I was informed by the Registrar that the preparation of the records and so on required more than four months time. Because

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it is in Turkish; I cite from the Interpretation of the Law, Section 34 of Chapter 1, page 14:

“Save as otherwise expressly provided, whenever forms are prescribed, slight deviations therefrom, or necessary alterations thereto not affecting the substance or calculated to mislead, shall not vitiate them”.

Chief Justice: What is that about?

Essad Bey: About the objection of the affidavit, my Lords, I cited this section. That the slight deviations do not affect the substance.

Chief Justice: Mr. Fadil, you are prepared to go as far as three months, he asks for four, and he points out that there is not a great deal of difference between them, and he points out that there are a number of Turkish translations and so forth to be made and checked, and it is not that his client cannot do it but that the registrar and the officers in this court may have difficulty in doing it in that time. 10

Mr. Korkut: All right. For the Registrars I have no objection.

Essad Bey: And the time of four months starts after the filing of the security.

Chief Justice: Well, that will prolong it. Both times ought to run from to-day. 20

Essad Bey: As Your Lordship pleases.

Chief Justice: And if after you have begun to do the work your client fails to find security you have our sympathy. (To Mr. Korkut): Have you notified the respondents that you have this application?

Mr. Korkut: I have not yet received his address, of course they did not know that there would be such an appeal and they did not leave me their address before leaving Cyprus.

Chief Justice: You see this is an appeal as of right it cannot be refused. The practical questions are the amount of security and the time for preparing the record. Shall we really gain anything by putting the whole thing off until you have notified your clients? Can they be expected to give you instructions on which you would have acted otherwise than you have acted? 30

Mr. Korkut: No.

Chief Justice: So there again we cannot really do very much. I mean you have accepted documents that were served on you, apparently, haven't you?

Mr. Korkut: As Your Lordship pleases.

Chief Justice: Well that is a matter of fact, you have had the documents, you did not refuse them. 40

Mr. Korkut: No

Chief Justice: And you did not tell them that you no longer represented the respondents. We do not wish to do anything which would cause any injury to the interests of your clients, but we shan't be doing that, shall we? You have to go to the Privy Council in the end, haven't you.

Melissas J: After all, this is a conditional leave.

Chief Justice: Have you any means of getting your client's address?

10 **Mr. Korkut:** I might try.

Chief Justice: You ought to be able to, I should think.

Mr. Korkut: Anyhow it can be found, it is not impossible.

Chief Justice: And you will try and find it and communicate with him?

Mr. Korkut: I will try, my Lord.

Chief Justice: Then, as has been pointed out to you, you have to come to this Court again for final leave.

*In the
Supreme
Court of
Cyprus*

No. 50
Application
for leave to
appeal to
Privy Council
(continued)

*In the
Supreme
Court of
Cyprus*

**No. 51
JUDGMENT**

In the Supreme Court of Cyprus

Sheri Appeal No. 55

No. 51
Judgment
29th September,
1951.

T I T L E

J U D G M E N T

In connection with this application for leave to appeal to the Privy Council Mr. Fadil Korkut has drawn our attention to two irregularities in the application. One was that the affidavit supporting the statements of fact in the application was signed by a person other than the applicant and does not at the same time state the authority given by the applicant for signature. It has been pointed out to us that this is an infringement of the ordinary rules of practice of the Privy Council. Mr. Korkut admitted, however, that the irregularity has no substance in this particular case, because the facts contained in the application which the affidavit is intended to support are facts about which there is no dispute, well known to both the parties in the case, as well as to us who sit on the bench now and who tried the appeal. We think, therefore, that that particular irregularity can be ignored. 10

Mr. Korkut also drew our attention to what he claimed was another irregularity, in that Clause 5 of the Order in Council which deals with appeals to the Privy Council had not been complied with, since notice of the application for leave to appeal had not been given to the opposite party. The opposite party in this case appears to be absent from the Island and Mr Korkut, who represented him in the appeal in this Court, does not know his address and has no instructions from him. Nevertheless he received service of the notice of intention to apply for leave to appeal to the Privy Council without notifying the other side that he no longer representel the respondents in the case. Moreover, this is a case in which there is a right to appeal to the Privy Council because of the amount involved and no objection to the application could be taken on that ground. 20 30

The practical questions we have to decide are simply the amount of the security to be required from the applicant, the time within which it is to be provided, and the time within which the record shall be prepared and despatched to England. We think, therefore, that even if the respondents had received express notice in this case we would not have been able to do anything else upon this application than what we are asked now to do. So, rather than postpone the hearing of the application for an indefinite time, it appears to us to be more satisfactory to deal with it now, regarding Mr. Korkut as representing the respondents as he has done throughout the proceedings up to now. 40

On the two questions, therefore, on which we are asked to give

our decision we shall say that in the particular circumstances of this case, which are well known to us because we heard the appeal, we think that the maximum amount of security should be provided, namely £500. The applicant asks for three months' time to provide the security and Mr. Korkut suggests that two would be sufficient.

*In the
Supreme
Court of
Cyprus*

We are not inclined, in the circumstances of this particular case, to extend the time for more than would be sufficient. Therefore we shall say that security shall be provided in accordance with clause 6 of the Order in Council in a sum of £500 within a time not exceeding two
10 months from to-day.

No. 51
Judgment
29th September,
1951.
(continued)

As for the time within which the record is to be prepared and despatched, there are some special difficulties in this case because all the documents are in Turkish and some of them in a form of that language which is not current today and which require expert translation. In view of these special difficulties we think, and Mr. Korkut for the respondents agrees, that the time of four months for which the applicant asks is not excessive. We shall accordingly order that the time within which the applicant shall take the necessary steps for the purpose of procuring a preparation of the record and its despatch
20 to England shall be four months beginning from to-day.

There is one other point which was raised in this application about which I have not said anything. That was the applicant's request for a stay of execution. That request cannot be based upon clause 7 of the Order in Council for this is not a case which falls within that clause, and there is no other ground, in our opinion, which would justify us in making such an order. Since the estate has already been distributed, there appears to be no reason to suppose that even if such an order were made it could have any effect. In any case this is not an instance
30 in which the applicant is entitled to the order for a stay of execution, nor a case in which we see any reason to make one .

(Signed) E. St. J. Jackson

Chief Justice.

(Signed) M. C. Melissas

J.

29th September 1951.

No. 52
Order
granting
conditional
leave to
Appeal to
His Majesty
in Council
*29th September
1951*

ORDER granting conditional leave to appeal to His Majesty in Council

Upon the petition of the above-named appellant filed on the 3rd day of August, 1951, praying for leave to appeal to His Majesty in His Privy Council from the judgment of the Supreme Court pronounced herein on the 18th July, 1951, coming on to be heard before this Court, and upon hearing what was alleged by Essad Bey and Mr. E. Emilianides, advocates for the Petitioner, and Mr. Fadil Korkut Bey and Mr. G. Polyviou, advocates for the respondents herein, **THIS COURT DOTH** Grant the petitioner conditional leave to appeal from the said judgment to His Majesty in His Privy Council, subject to the following conditions:—

10

(a) That the petitioner shall give a security in £ 500 to be lodged in Court within two months from the date hereof for the due prosecution of the appeal and for the payment of such costs as may become payable to the respondents in the event of petitioner not obtaining an order granting him final leave to appeal, or of the appeal being dismissed for non-prosecution, or of His Majesty in Council ordering the appellant to pay the respondents' costs of the appeal (as the case may be.);

(b) That the petitioner shall take the necessary steps for the purpose of procuring the preparation of the record and the despatch thereof to England within four months from the date hereof.

20

Dated the 29th day of September, 1951.

Entered the 26th day of January, 1952.

(Sgd) M. Melissas,

J.

Sheri Appeal No. 55

No. 53

Order granting
final leave
to appeal to
Her Majesty
in Council.

ORDER granting final leave to appeal to Her Majesty in Council.

IN THE SUPREME COURT OF CYPRUS.

Before : E. Hallinan, C. J., and Melissas, J.

On appeal from the Sheri Tribunal of Nicosia - Kyrenia sitting at Nicosia.

Actions No. 14/45 and
No. 41/45

Between : Hussein Raji Ahmed Ferid of Nicosia,

Appellant—Plaintiff,

10

AND

1. Mehmed Ata Ali Ismet of Nicosia,
2. Pembe Ali Ismet of Nicosia,

Respondents—Defendants.

(Actions consolidated by order of the Sheri Tribunal
dated the 13th December, 1945).

20 Upon the application of the above-named appellant for final leave to appeal to Her Majesty in Her Privy Council from the judgment of this Court dated the 18th July, 1951, coming on for hearing before this Court and upon hearing Mr. E. Emilianides, counsel for the Appellant, and Mr. Fadil Korkut, counsel for the Respondents, THIS COURT being satisfied that the conditions contained in an order of this Court made on the 29th day of September, 1951, have been complied with, DOTH GRANT final leave to appeal.

Dated the 9th day of April, 1952.

Entered the 6th day of May, 1952.

(Sgd) E. Hallinan,
Chief Justice.

*Plaintiffs
Exhibits*

Nos. 1 & 2
(V.L. 1 & 2)

Arabic Original
and Certified
Translation of
Certificate of
Death.
17th July,
1945.

EXHIBITS

1 (V.L. 1) Arabic Original of V.L. 2 (below)

2 (V.L. 2) — Certificate of death of Zahra Hanem Hagi Hafez, mother of Khadija Hanem Hassan Rafat, issued by Gamalia (Egypt) Sharia Court. Translation into English legalised at Royal Egyptian Ministry of Foreign Affairs, 18th. July, 1945.

TRANSLATION

Judge of Gamalia
Sharia Court.

Serial No. 2307
2331

At the Gamalia Sharia Court on Thursday 3rd Shaban 1314 equivalent to 12th July, 1945, in compliance with the application submitted by Khadija Hanem Hassan Rafat registered under No. 845 of 1944—45 in which she has expressed her desire to establish the death of her late mother Zahra Hanem Hagi Hafez on the 19th November 1938 and the devolving of her estate in her daughter and sole heiress, who is Khadija Hanem Hussein Rafat (the applicant) only, and after examining the administrative measures and investigations, which were carried out in accordance with the provisions of Article 359 of the Law, and after hearing the testimony of each of Mahmoud Badr el Dine Eff., teacher at the High School of Applied Engineering, and Mohamed Eff. Kassem Ahmed, teacher at the same school, which testimony appeared to be in conformity with the application and investigations, it was therefore, revealed to us, We Abul Fettouh El Laisay, delegated Judge, the death of Hanem Hagi Hafez, near El Saraiat, Abbassia, on the 19th November 1938, and that her legal estate devolves to her daughter Khadiga Hanem, daughter of Hussein Rafat, solely without any partner or heir whatsoever. This drawn in the presence and with the testimony of those mentioned above.

Registered under No.2307 Serial, 2331 Role, Ishhadat divers 1944, 1945 in virtue of which this was drawn on the date hereof.

Signature of
Clerk and Checker.

Signature of.....
Chief Clerk of Court

SEAL OF COURT

The signature affixed hereabove under the designation of (Judge of Gamalia Sharia Court) is the signature of His Honour Sheikh Ismail El Nabli, Judge of the said Court.

Dated 17th July, 1945.

Signature of
Under-Secretary of State
Ministry of Justice.

This translation was made by me.

21.3.45 (sgd) L. G. ANDREWS

Seal of Ministry of Foreign Affairs
Egyptian Government.

EGYPTIAN GOVERNMENT

Legalised at the Egyptian Royal Ministry of Foreign Affairs for the signature of Mr. Ibrahim Khalil, signing for the Under Secretary of State, Ministry of Justice.

No.8455.

Dated 18th July, 1945

Seen for the legalisation of the Seal of the Ministry of Foreign Affairs affixed above.

*Plaintiffs
Exhibits*

No. 2 (V.L. 2)
Arabic
Original
and Certified
Translation of
Certificate of
Death
17th July,
1945.
(continued)

Cairo 19th July 1945. (Sd)

10

British Vice Consul

Seal of British Consulate General,

Cairo.

(Declaration by L. G. Andrews that this was translated by him and the certification of the British Vice-Consul in Cairo testifying the declaration of the translator)

3 — Particulars contained in Title Deed (Kochan) No. 284 marked M.J. 3/M.J. 4

Title Deed No. 284, Nicosia, Block 14, Plot 22, Korkut Eff. Qr.

Property: One shop, 150 sq. ft.

Nos. 3 & 4
Title Deed
No. 284
(M.J. 3)
(M.J. 4)

20 5 — (M.J. 5) Application by Ayshe Vehbi for transfer of property.

Exhibit M.J. 5.

No. 5
Application
by Ayshe
Vehbi

To the Director of Land R. and Surveys,

Sir,

I beg to request that the attached title-deeds may be transferred to my name.

M.J. 5

(Sd) Ayshe Vehbi

Yeni Jami.

24.10.40

*Plaintiffs
Exhibits*

6 — Certificate of death of Ahmed Muhiddin by Mukhtar and Azas of St. Sophia, dated 13/10/40.

No. 6
Certificate
of Death
of Ahmed
Muhiddin

Exhibit M.J. 6.

C E R T I F I C A T E

We certify that Ahmed Muhiddin Eff. Vehbi Eff., who was a resident of our quarter, died on 25th October, 1937, and as his heir left his sister Ayshe Hanim Vehbi Eff. and no other either in Cyprus or abroad.

(Sd) Arif Mentesh

(Sd) Hassan Haji Hussein

M.J. 6

Aza

Mukhtar.

(Sd) Saadi Hassan

13th October, 1940

10

Aza.

No. 7
Mortgage
G.123 143

7 — Mortgage registered with Land Registry Office Cyprus Exhibit M.J. 7.

Land Registration and Survey Department

(Form No. 37A)

No. G. 123143

Certificate of Mortgage

M.J. 7

Registered at Nicosia the 11th day of November, 1940.

Mortgagor: Ayshe Vehbi, residing at Nicosia.

Mortgagee: Rasiha Houssein Zihni, residing at Nicosia.

Properties mortgage: Regns. Nos. 284 Mulk at Nicosia, Korkout Eff.

Qr., H.P. 639 I lot £ 65. 0. 0.

20

(Sgd) Loizos Christofides

for Principal Land Registry Officer.

No. 8
Mortgage
G. 124 772

8 — Mortgage registered with Land Registry Office, Cyprus Exhibit M.J. 8 Mortgage.

Land Registration and Survey Department

(From N. 37A)

No. G.124772

Certificate of Mortgage

M.J. 8

Registered at Nicosia the 4th day of March, 1942.

Mortgagor: Ayshe Vehbi, residing at Nicosia.

Properties mortgaged: Regns. Nos. 284 Mulk at Korqout Eff. Qr.

(Iplik Bazar) Nicosia H.P. 639 1 lot ass. value £65. 0. 0.

30

(Sgd.) G. S. Panayides

for Principal Land Registry Officer

9 — (M.R. 9) Entry No. 417 in Ilam Book of old Sheri Court.*Plaintiffs
Exhibits*

Exhibit M.R. (9)

No. 9
Entries in
Ilam Book
& Sheri Court

We bear witness that Ahmed Fetthi Eff., son of deceased Kaimakam Haji Hafiz Mustafa Eff. died a natural death at Halwan, a town in Egypt.

✻ ✻ ✻

M.R. 9

Entered this 23rd day of Zilhijje, 1338.

(6th September, 1920)

10 — (M.R. 10) Entry No. 75 in Ilam Book of old Sheri Court.

Exhibit M.R. (10)

10 It having been brought to the notice of the Sheri Court that Fatma Hanim, a daughter of Sarrajzade Haji Mustafa Eff and the latter a son of Abdullah, died some time ago in the St. Sophia quarter of Nicosia, capital of Cyprus, and it having been proved that, her inheritance has passed absolutely to her son Rifat Haji Nouri Eff., who having left for abroad some time ago is now absent from Cyprus and of unknown place of residence; the Sheri Court Doth appoint the said father Haji Nouri son of Osman Eff., upon his application, to be administrator and to keep under his safe custody and administer the property of his absent son and a list of the estate as written down by the Sheri Court is given hereïn below:—

M.R. 10

Registered this the 19th day of Zilhijja, 1314.

20 11 — (M.R. 11) Entry No. 398 in Ilam Book of old Sheri Court.

Exhibit M.R. 11.

It is adjudged and a registration thereof is herein made that the said Rifat Eff., son of Haji Nouri Eff., having died eleven years before this date, i.e. he having died before his deceased mother Fatma Hanim the estate of the said Fatma Hanim, according to the Sheri Law, passes absolutely to the said plaintiff Mehmed Izzet Eff. and to the said Emine Hanim and Akile Hanim.

M.R. 11

Entered this 15th day of Rebiul-evvel, 1320.

Defendants' Exhibits

12 — (M.A. 1) Certificate of death of Ayshe Vehbi by Mukhtar of St. Sophia Quarter.

No. 12
Certificate of
Death of
Ayshe Vehbi

C E R T I F I C A T E

M.A. 1 According to my inquiries the heirs of Ayshe Hanim Vehbi who resided in our St. Sophia quarter and died on 8th April, 1945, are Mehmed Atta Ismet Eff. of Nicosia and his brother Mustafa Mukhtar Ismet Eff in America and Pembe Ismet Eff. of Nicosia and I understand that in addition to these she also has heirs in Lefka and Turkey. I went to the deceased's house and opened a closed case in the presence of Fetthi Bey, son of Atta Bey and of Halil Rejeb and found in it a pair of emerald earrings and 6 one pound English currency notes which I kept in my custody. According to my information Atta Bey also found £ 4 which is being kept by him, twelve chairs and 4 pieces of woollen clothing taken by the deceased's maidservant Nazife to the house of Abdurrahman Eff.'s daughter Vedia have also been recorded and taken back to the house of the deceased and the door has been nailed and sealed and I have detailed Halil Rejeb as a night guard. I also enclose the title deeds of her property together with a list of them and in testimony of the above this certificate is issued under my hand and seal. 10

Nicosia, (sd) Hassan Hji Hussein 20
10th April, 1945 Mukhtar of St. Sophia quarter
(Seal)

No. 13
Notice to
Sheri Court
by Remzi Yussuf

13 — (M.A. 2) Notice to Sheri Court by Remzi Yussuf.

Exhibit M.A. 2.
Nicosia, 12.4.1945

To the Sheri Court,
Nicosia - Kyrenia.

M.A. 2 We beg to inform you that we are the cousins of the deceased Ayshe Hanim Vehbi Eff., who died on 8.4.1945, and that her uncle Fahreddin's son Ferid Eff's deceased son Ahmed Ferid has a son named Hussein Raji and a daughter Feride now living in Turkey; and we therefore request that your Court may take this into consideration. 30

Ziya Yussuf Remzi Yussuf

14 — (M.A. 3) Details of properties in name of Muhiddin, Ayshe and Fatma Hanim Mustafa.

Defendants' Exhibits

Iphile Bazaar Quarter ·

Title Deed No. 89 — Map No. 9, Plot No. 119, House and yard.

Title Deed No. 90 — Map No. 9, Plot No. 119/1, Shop, 160 sq. ft.

Title Deed No. 91 — Map No. 1, Plot No. 119/2, Shop, 153 sq. ft.

No. 14
Properties
in name
of Muhiddin,
Ayshe and
Fatma

St. Sophia Quarter :

Title Deed No. 55 — Block 7, Plot 77, House.

Title Deed No. 56 — Block 7, Plot 78, House.

10 Title Deed No. 64 — Block 7, Plot 100, House.

Title Deed No. 405 — Block 14, Plot 236, Shop, 550 sq. ft.

Title Deed No. 1004 — Block 14, Plot 334—349, Shop, 600 sq. ft.

Omerieh Quarter :

Title Deed No. 140 — Block 19, Plot 115, Shop, 436 sq. ft.

Defendant's Exhibits
No. 15
Passport of Mehmed Assim Dedezade

15 —(M.A. 1-7/6/46) Passport No. A.5128 of Witness No. D.1., Mehmed Assim Dedezade.

(Photographic Reproduction of Entries bearing on this Appeal)

M.A. 1

No. A 5128 251443
PASSPORT.

By His Excellency John Cyril Douglas
 Penn, Companion of the Most Distinguished Order of Saint Michael and Saint George, Officer Administering the Government of the Colony of Cyprus.

These are to request and require in the Name of His Majesty all those whom it may concern, to allow

Mehmed Assim Dedezade

to pass freely, without let or hindrance, and to afford him every assistance and protection of which he may stand in need.

Given at Nicosia the 23rd day of September 1925.

By command of His Excellency
 the Officer Administering the Government.
W. H. H.
 for Acting Colonial Secretary.

This passport contains 32 pages
 Ce passeport contient 32 pages.

copy
2/10
11

PASSPORT.
PASSEPORT.
CYPRUS.

No. of PASSPORT } *A 5128*
 No. du PASSEPORT }

NAME OF BEARER } *Mehmed Assim*
 NOM DU TITULAIRE } *Dedezade*

ACCOMPANIED BY HIS WIFE (Maiden name)
 ACCOMPAGNE DE SA FEMME (née)

and by (children) / et de (enfants)

NATIONAL STATUS
 British Subject under the Cyprus (Admission) Order in Council, 1925

(Continued)



(EXHIBIT No. 15)

(Continued)

Defendant's Exhibits

No. 15
Passport
of Mehmed
Assim
Dedezade

DESCRIPTION SIGNALEMENT		Wife - Femme:	
Profession Profession	<i>Merchant</i>		
Place and date of birth	<i>Nicosia</i>		
Lien et date de naissance	<i>Cyprus, 1879</i>		
Domicile Domicile	<i>Nicosia</i>		
Height Taille	<i>5 ft 9 in</i>		
Colour of eyes Couleur des yeux	<i>Chestnut</i>		
Colour of hair Couleur des cheveux	<i>Grey</i>		
Special peculiarities Signes particuliers	<i>Thumb of right hand missing</i>		
CHILDREN - ENFANTS			
Name Nom	Age Age	Sex Sexe	

PHOTOGRAPH OF BEARER	
	
WIFE - FEMME	
	

SIGNATURE OF WIFE - ENFANTS

M.A. 1

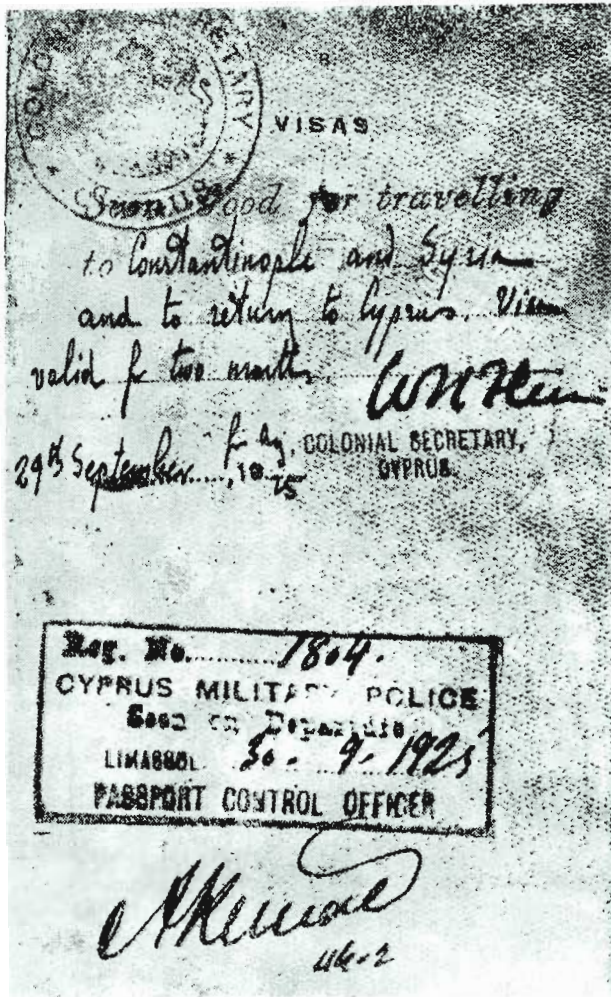
(Continued)

(EXHIBIT No. 15)

(Continued)

Defendant's Exhibits

No. 15
Passport
of Mehmed
Assim
Dedezade



M.A. 1

(Continued)

(EXHIBIT No. 15)

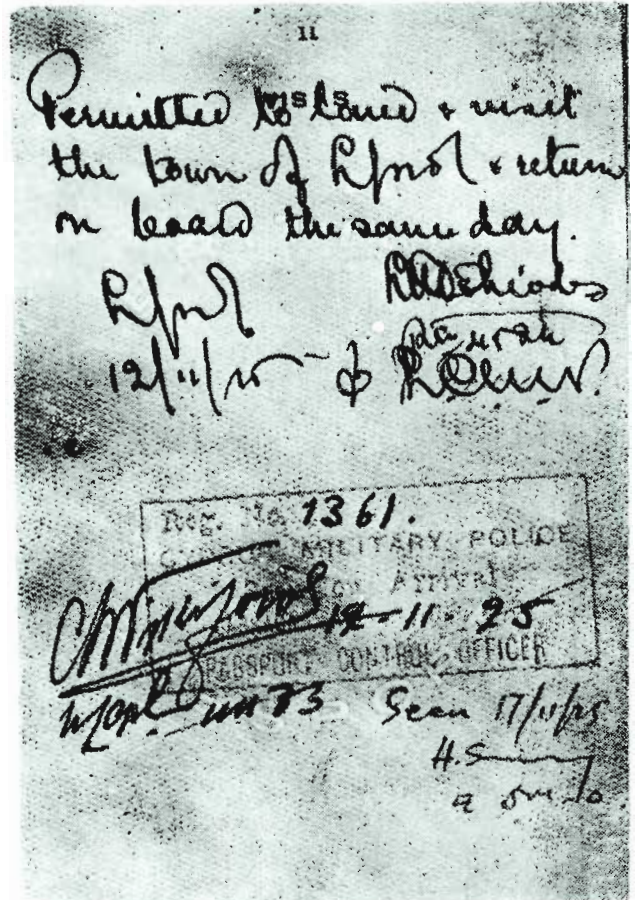
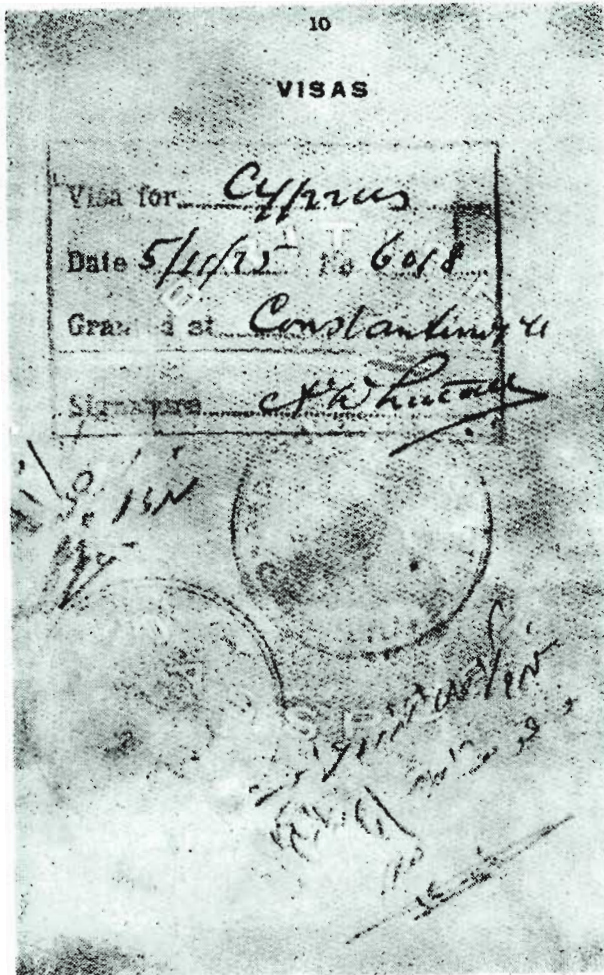
(Continued)

Defendant's Exhibits

No. 15

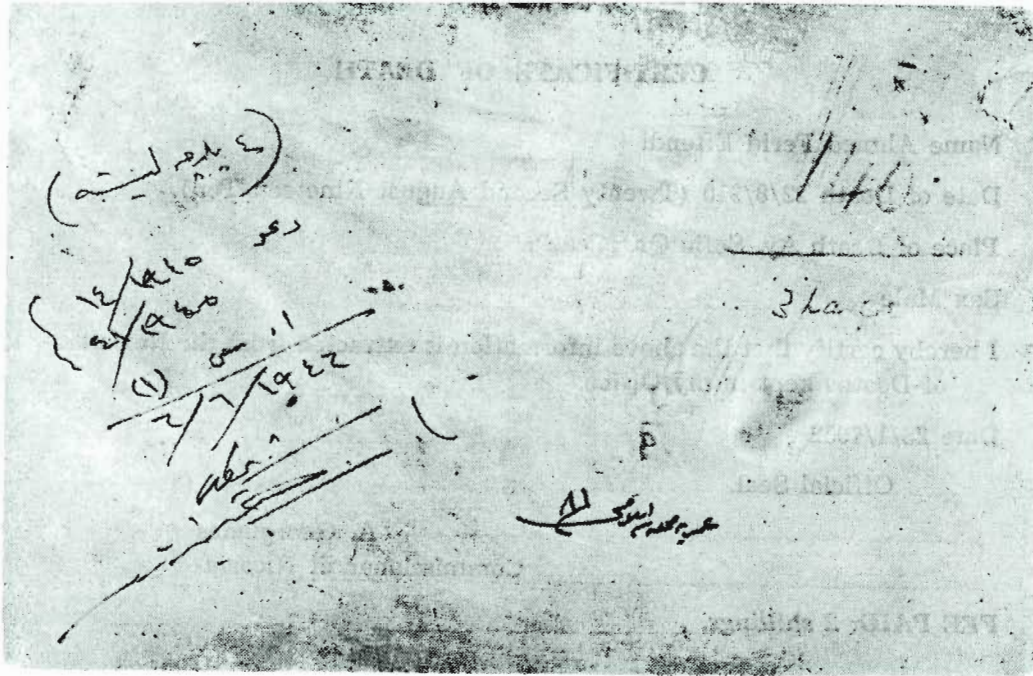
Passport of Mehmed Assim Dedezade

M.A. 1



(EXHIBIT No. 15)

(Continued)



Defendant's Exhibits

No. 15
Passport
of Mehmed
Dedezade
Assim

Exhibits

*Defendant's
Exhibits*

No. 16
Death Certificate
of Ahmed Ferid

16 — (A.Y. 1) Certificate of Death of Ahmed Ferid.

[Form F. 162.]

The Births and Deaths Registration Law, 1947.

(Section 26).

CERTIFICATE OF DEATH

Name Ahmed Ferid Effendi

Date of Death 22/8/910 (Twenty Second August Nineteen Ten).

A.Y. 1

Place of Death Ay. Sofia Qr. Nicosia

Sex Male

I hereby certify that the above information is extracted from the Registers 10
of Deaths kept in my Office.

Date 28/1/1952

Official Seal.

A. Georgiades
Commissioner of Nicosia

FEE PAID: 2 shillings.

17 — (A.Y. 3) Certificate of Death of Ahmed Muhiddin,

No. 17
Death Certificate
of Ahmed
Muhiddin

[Form F. 162.]

The Births and Deaths Registration Law, 1947.

(Section 26).

20

CERTIFICATE OF DEATH

Name Ahmet Muhiddin Effendi

Date of Death 25/10/937 (Twenty Fifth October Nineteen Thirty Seven.)

A.Y. 3

Place of Death Ay. Sofia Qr. Nicosia.

Sex Male

I hereby certify that the above information is extracted from the Registers
of Deaths kept in my Office.

Date 28/1/1952

Official Seal.

A. Georgiades
Commissioner of Nicosia

30

FEE PAID: 2 shillings.

18 — (M.K. 1) Search Certificate No. 1244 dated 19.7.46

APPLICANT: Mehmed Atta of Nicosia.

Registration No. 14718, date 3/4/45. In the village of Lefka in the name of Rifat Salih Hadji Salih.

Garden and stable. Plot 561/4.

This registration originally comes from Reg. No. 589, Lefka village effected during Arazi Yoklama of 18.8.1288 in the name of Hj. Salih Hj. Noulla Osman by purchase from Salaheddin Ahmed and his wife Zurie.

(Signed) for D.R.L.O.

*Defendant's
Exhibits*

No. 18
M.K. 1
Search
Certificate
No. 1244
dated 19.7.46

10 19 — (M.K. 2) Details of Property registered in name of Ali Riza Ibrahim Agha.

Title Deed No. 13382, Omerieh Quarter. House and Yard, newly assessed value, 21,600 piastres.

No. 19
M.K. 2
Details of
Property registered
in name of
Ali Riza
Ibrahim Agha.

20 — (M.K. 3) Search Certificate No. 929 dated 16.3.46.**Reproduction of Original Official Document.**

No. 0929 Land Registry Office, Cyprus—Certificate of Search (Form No.51)

Date of Issue 16.3.46 Fees Paid £ 0. 6. 1.

APPLICANT: Houssein Raji of Nicosia . . .

Appl. No. 195/46

Deposit Note

20 Application for a search certificate stating for where regn. 530 at Omerieh Qtr. is derived.

No.868017

868014

868013

Registration Number	Survey or	Reference Plot No.	Locality	Kind of Property	Extent
Regn. No. 530	19	17	Omerieh Qtr.	House & yard	Don. Evl. Sq. Ft. 1068
8.8.42					

No. 20
M.K. 3
Search
Certificate
No. 929
dated 16.3.46
No. 21

Boundaries. Regn. 530 at Omerieh Qtr. in the name of Hasan Ali Riza Eff. is derived from Regn. No. 6711/1.885. This registration was original registered in the name of Zurie Hanum bint of Houssein Edip Eff. by inheritance from her father Hussein Edip Eff.

30

Seal

(Signed) Ch. Callonas

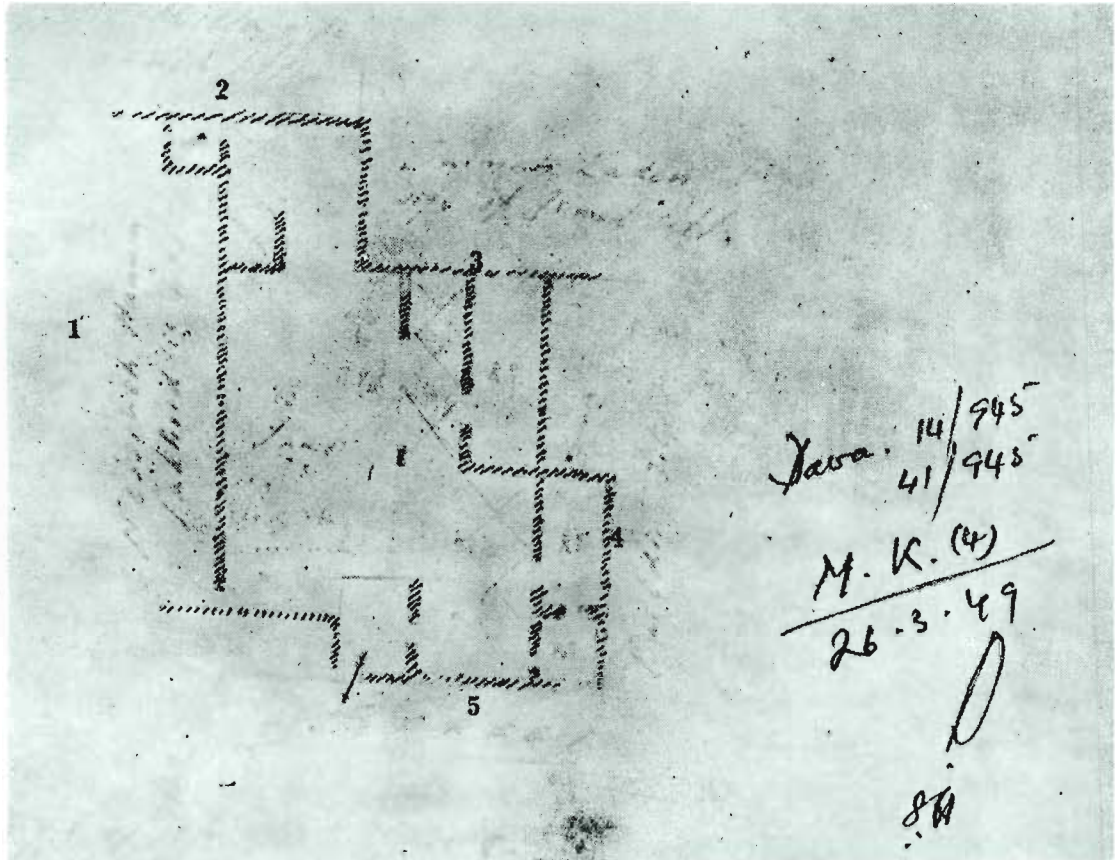
for D.L.R.O.

EXHIBIT No. 21

Plan of Property referred to in evidence

Defendant's
Exhibits

M.K. 4
Plan from
Land Registry
records of
1885



1. Nesibe Hanum, Fahreddin Effendi.
2. Ayshe Mulla, wife of Ahmed Effendi.
SAIME
3. ~~Saim~~ Kadin, wife of Ahmed Effendi.
4. Building Site.
5. Street.

22 — (M.K. 5) Search Certificate No. 6508 dated 18.3.49

Defendants' Exhibits

Reproduction of Original Official Document

No. 6508 Land Registry Office, Cyprus — Certificate of Search (Form No.51)

Date of Issue 18.3.49 Fees Paid £0. 6. 1.

No. 22
M.K. 5
Search
Certificate
No. 6508
dated 18.3.49

Ap. No. S.R.P. 122

49

APPLICANT: Hussein Raji, Nicosia

Deposit Note

No.203852

Application for a search certificate showing the properties under plot No. 97 of Block 7 at Nicosia, Haidar Pasha Street belonging to Djobra Fattallah and others of Beyrouth giving the means of acquisition by them of this property and stating also the name of the person from whom this property was transferred to the present holders mentioned above.

Registration No.	Survey Date	Reference Street & Plot No.	Localty	Kind of Property	Extent Don. Evl. Sq. Ft.
3324	3/1291	Haidar- Pasha 7	97	.. House	————

Boundaries. In the name of Hussein Edip Eff. acquired through purchase. Note: The above property has been transferred by way of sale to Rg. 4257 of Temmuz 1294 to Moussa Baystros with others of Beyrouth. This is to certify that the above information has been obtained from the old Land Registration of Nicosia Town.

(Signed) for D.R.L.O.

M.K. 18/3/49

(over Seal)

Defendant's Exhibits

No. 28
List of Moslems in Omerieh Quarter

23 — (A.S. 1) List of Moslems in Omerieh Quarter.

نام	فولئو	تفانست	ایارون	قنبرین	اچاک
		۲۶۶	۶۶۶	۱۰۱۱	۲۰۰
نقصه	۲۶			۶	۶
فکره اسحاق بن مظفر	۲۶			۶	۶
نظم فدویه بهر اسحاق	۲۵	۲۰۰		۱۰	۱۰۰
محمد زلف بهر یونس	۲۵			۲۸	۲۸
کاتبه زاده کاتبه	۲۶			۲۰	۲۰
مصدق درویش زلف کوردک	۲۶			۲۲	۲۲
حسینه اویسه زلف کریم مرز بهر خانم	۲۵		۲۰	۱۱	۱۶
فخریه زلف کریم	۲۵			۸	۸
نارنگه مظفر زلف درویش	۲۸			۱۰	۱۰
ادویه زلف نام محمد زلف	۲۸			۰	۰
مظفر بهر اسحاق	۲۹	۲۵	۰	۲۹	۹۹
محمد بهر محمد بهر بخاری	۲۰			۲	۲
محمد بهر محمد بهر بخاری	۲۱			۸	۸
محمد بهر محمد بهر بخاری	۲۱	۱۵		۱۰	۲۵
محمد بهر محمد بهر بخاری	۲۰			۰	۰
محمد بهر محمد بهر بخاری	۲۰			۸	۸
محمد بهر محمد بهر بخاری	۲۲			۶	۶

Exhibit A.S.1

The list of Moslems in Omerieh Quarter 1881.

daughter of Zuriye Hanim Hussein Edip.	Folio No.	Vol.	Tax over profit	Tax over Revenue	Tax over value	Total
	26	—	—	—	30 p.	30 p.

24 — Extract from Nufus Book.

(اساس نفوس)

رقم	کنه	اسم	مقام	گروه احوال	ماده دولتی	اسم	سند و کتب	سند ازدواج	صفتی	تبعی
۳۵۷۱	۵۷	Edib Houssein Effendi Moustafa Agha	مدير	۱۴	۱۲۲۸	۱۲۴۰	۸۷۴	۸۷۵	۸۷۶	۲۰
۳۵۷۲	۵۸	His wife Saime daughter of Hji. Hussein		۱	۱۲۲۳	۱۲۴۰	۹۳۵			

PAGE 103 (ORIGINAL POPULATION) Continuation of Omereh Quarter

Number General	Family Number	Name	Male	Female	Number of House	Date of Birth	Date of Marriage	Trade	Category of Properties and Register in which they are registered			Old Tax
									874	875	876	
3573	58	Edib Houssein Effendi Moustafa Agha			14	1228	1240	Mudir	1	1	1	20
3574		His wife Saime daughter of Hji. Hussein	1	1		1223	1240				935	

Exhibits
No. 24
Extract
from Nufus
Book.

Exhibit referred to in evidence of M. Ratib p. 71
of the printed notes.

Exhibit No. 26

Sheri Appeal No. 55

Sheri Register No. 51, page 112.

The esteemed Hussein Edib Eff., son of Moustafa, living in the Omeriye Quarter of Nicosia which is the seat of the Governor of the Island of Cyprus, makes a full declaration and acknowledgement by word of mouth in the exalted Sheri Court in the presence of his son-in-law Hussein Fahreddin Eff. son of Elhaj Ahmed of the same quarter thus causing the present record to be made. As it is stated in the certificate produced, the house No. 14 at Hizir Street of the same quarter, consisting of 3 groundfloor rooms with verandahs in front, one kitchen, one W.C., some yard with fruit-trees and other trees, as per permit issued to me by the L.R.O. and up to this day belonging solely and exclusively to me and bounded on one side by my grand-daughter Nesime Hanim's room and building site, on the other side by Saime Kadin and partly by the house of Ayshe Mulla, daughter of Mehmed Eff., on the other by a building site and on the fourth side by public road is sold and delivered by me to my son-in-law Hussein Fahreddin Eff. with all its appurtenances, having been offered and accepted by him, free of any invalidating or collusive terms and with a conclusive sale for the sum of 1300 piastres. My son-in-law Hussein Fahreddin Eff. accepts the sale to him as above, and he takes over and appropriates the said house for the said sum of 1300 piastres which he paid to me fully, the receipt of which I hereby acknowledge and I further declare that there has been no deception or overcharge in the sale and that in the said house described as above I have no right or interest whatsoever any longer and let him be the absolute owner and enjoyer of the said house in the way he likes.

In testimony whereof the present document is executed this 24th day of Rebiulahir, 1279.

Witnesses.

Muhzir Bashi Mehmed Eff.
 Kiatipzade Kiamil Eff.
 Misri Elhaj Hussein Eff.
 Ali Eff.: Evcaf Clerk.
 Ahmed Agha: the Chief Auctioneer.