# DOCUMENTS PERTAINING TO THE FIRST LEGAL COURT CASE FILED BY THE OTTOMAN EMPIRE TO RECLAIM ITS SMUGGELD ARTIFACTS<sup>1</sup>

#### OSMANLI DEVLETİ'NİN KAÇIRILAN ESERLERİ GERİ ALMAK İÇİN AÇTIĞI İLK DAVA BELGELERİ

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#### Abstract

Heinrich Schliemann's first official excavations, which began in 1871, became the most discussed and debated archaeological excavation of the 19th century. In particular, the question of whether the city of Troy, mentioned in Homer's epics, really existed or not is the focal point of these discussions. However, the 'Treasures of Priamos' found by Heinrich Schliemann in 1873 and smuggled out of the Ottoman Empire were also intensely discussed. The lawsuit filed by the Ottoman Empire in Athens in April 1874 to recover the treasures illegally smuggled by Heinrich Schliemann was finalised in May 1875. There are different stages of the lawsuit process in Athens. Despite the Ottoman Empire prevailing in the lawsuit to recover the artefacts, the proceedings were ultimately concluded with a settlement, in light of the prevailing circumstances of the period. Until today, no documents related to the case from Greece Archive have been published. In this article, for the first time, the first court decision and documents of the 'Priamos Treasure Case' in Athens are published in facsimile. The case documents, including a complete list of artefacts, are of great importance for the evaluation of Ottoman archival documents on the subject.

**Keywords**: Henrich Schliemann, Troy Excavation, 'Priams Treasures', Ottoman Empire, Court Case Process

#### Öz

Heinrich Schliemann'nın 1871'de başlayan ilk resmi kazıları, 19. Yüzyılın üzerinde en çok konuşulan ve tartışılan arkeolojik kazısı olmuştur. Özellikle, Homeros'un destanlarında adı geçen Troya kentinin gerçekten varolup olmadığı konusu bu tartışmaların odak noktasını oluşturmaktadır. Ancak Heinrich Schliemann'ın 1873 yılında bulup, Osmanlı İmparatorluğu dışına kaçırdığı 'Priamos Hazineleri' de aynı şekilde yoğun bir şekilde tartışılmıştır. Osmanlı Devleti, Heinrich Schliemann'ın yasa dışı yollarla

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kaçırdığı hazineleri geri almak için Atina 1874 Nisan ayında açtığı dava 1875 yılı Mayıs ayında sonuçlandırılmıştır. Atina'daki dava sürecinin farklı aşamaları söz konusudur. Osmanlı Devleti'in eserleri geri almak için açtığı davayı kazanmış olmasına rağmen, dönemin koşulları nedeniyle dava sulh ile sonuçlandırılmıştır. Günümüze kadar söz konusu dava ile ilgili Yunanistan arşivlerinden hiçbir belge yayınlanmamıştır. Bu makalede ilk kez Atina'daki 'Priamos Hazinesi Davasını' ilk mahkeme karaı ve belgeleri faksimile olarak yayınlanmaktadır. Eserlerin tam bir listesini de içeren dava belgeleri konu ile ilgili Osmanlı Arsiv Belgeleri'nin değerlendirmek için büyük önem tasımaktadır.

Anahtar Kelimeler: Henrich Schliemann, Troya Kazıları, 'Priamos Hazineleri', Osmanlı İmparatorluğu, Mahkeme Süreci

#### INTRODUCTION

The account of the discovery of the Trojan Treasures by Heinrich Schliemann on 31 May 1873 in Hisarlık/Troy and their subsequent removal on 6 June 1873 is divided into five sections in terms of developments (Easton, 1994: 221-223). The Trojan Treasures adventure can be divided into five sections. The first concerns their discovery and subsequent smuggling from Canakkale/Turkey (Aslan and Sönmez 2011; 43-51). The second covers their concealment in Athens by Schliemann during the legal struggle initiated by the Ottoman Empire to reclaim the treasures (Aslan, 2024. - Trail 1988; 1988: 273-277). The third section deals with their Following the lawsuit, a temporary exhibition was held in London (Easton, 1994: 231). From 1882 to 1945, the artefacts were displayed in Berlin (Saherwale- Goldman and Mahr, 1993). After World War II, the treasures were concealed in Moscow by Russian soldiers as war booty until 1995 (Tolstikov and Triester, 1996 – Sazcı, 2007). Of the five sections. the events in Athens and Moscow are the most legally debated and still controversial. The lawsuit process in Athens, which lasted approximately eight

between the Ottoman Empire and Schliemann, was the subject of considerable interest and attention from the international public at the time. Schliemann was able to retain possession of the findings by emploving a variety of strategies in Athens and securing illicit assistance from the Greek judicial system. It is regrettable that the unvielding stance of the Ottoman Empire from the moment the artefacts were unearthed remained unresolved for reasons that remain unclear. The findings were ultimately deemed in Schliemann's favour, as the Ottoman Empire withdrew from the lawsuit and, in effect, settled the case. The lawsuit process, which commenced in April 1874, concluded on 5 April 1875 with Schliemann agreeing to pay 50,000 gold francs in compensation (Sönmez, 2012: 215-228). Nevertheless, the rationale behind the Ottoman Empire's decision during this process remains largely unexplored. This article, for the first time, analyses the court process document from the Greek Archiv.

## The Discovery and Smuggling of 'Priam's Treasure'

The discovery of the treasures in Athens commenced on 26 June 1873, approximately two and a half weeks after the artefacts were unearthed in Troy. This occurred at Schliemann's residence on Mouson Street (Easton 1994: 226; Traill 1988: 277). Upon his return from Troy, Schliemann promptly commenced drafting his comprehensive report on the findings at Hisarlık Hill. He recorded his initial impressions in a rough draft of his diary (Schliemann, 1873: 300-3105: Easton, 1994: 276). He proceeded to unpack the items from the six crates and baskets, creating a comprehensive inventory. This list is regarded as the most accurate, given that the descriptions were made during the unwrapping of the artefacts (Easton, 1984: 149-156; Easton, 1994: 226). Schliemann realised that the report he had hastily written earlier was incorrect and therefore sent a telegram to his publisher Brockhaus, requesting that the report he had sent from Troy not be published (Witte, 1990: 452). In addition to the sauce container and bronze tools mentioned in the earlier report, he added two gold items. one electrum and nine silver vessels, six silver ingots, six gold bracelets, two gold caps, one gold diadem, four gold basket earrings with pendant chains, 56 gold shell earrings, and 8,750 gold beads, plaques, and buttons. The discovery of additional findings not referenced in the initial report from Troy also constituted a surprise for Schliemann. Discussions about these findings commenced following Schliemann's publication of the findings and continue to the present day. In light of Schliemann's reports, Easton posits that the artefacts were hastily wrapped with the intention of facilitating their illicit removal from Turkey. However, the artefacts, particularly the gold items, were not entirely visible due to their covering in soil within large bronze vessels. Accordingly, Easton posits that the comprehensive and definitive list was compiled by Schliemann at his residence in Athens (Easton, 1984: 162; Easton, 1994: 226 ff.- Günay, 1998).

Traill, however, posits that not all of Schliemann's artefacts were unearthed in Troy. In particular, he asserts that the artefacts subsequent to the list compiled in Athens were not discovered in Troy itself, but rather elsewhere, either purchased or possibly commissioned (Traill, 1983: 183; Trail, 1984). In contrast, Bleedow and Witte contend that Schliemann's reports, despite certain omissions, accurately reflect the artefacts he himself discovered at Hisarlik (Bleedow, 1991: 197-206; Witte, 1990: 452). However, recent Ottoman archival documents demonstrate that the artefacts were discovered at various times and in disparate locations within Troy. Additionally, it is evident that some of the artefacts were misappropriated by workers without Schliemann's knowledge, but were subsequently repurchased by him. Furthermore, Ottoman archival documents indicate that Schliemann illicitly transported the artefacts on three occasions in April, May and June 1873 (Aslan & Sönmez, 2012; Aslan & Sönmez, 2013).

#### **Beginning of the trial in Athens**

Schliemann, who was preparing to publish the Treasures of Troy in Athens, was aware that the Ottoman Empire would soon seek to reclaim the archaeological discoveries. The most significant factor contributing to Schliemann's apprehension was the stipulation set forth in the authorisation granted to him by the Ottoman Empire. In accordance with the stipulations set forth, the discoveries from Hisarlık Tepe were to be apportioned 50-50 between Schliemann and the Ottoman Empire (Schliemann, 1875: 53: Meyer, 1953: 185). Nevertheless, the authorisation granted to Schliemann was subject to the provisions set forth in the 1869 Regulation on Asarı-ı Atika. In accordance with the stipulations of the aforementioned Regulation, the artefacts were to be distributed between the excavator and the Ottoman State in a 50-50 ratio. However, the Regulation prohibited the exportation of the artefacts (for further details on the Asar-1 Atika Regulations, see Eldem, 2010: 53-62- Eldem, 2014- Karaduman, 2004). Consequently, Schliemann effectively engaged in the illicit exportation of the artefacts. Schliemann devised a series of strategies to counter the legal action initiated by the Ottoman Empire to reclaim the treasures. Schliemann's strategy was to bring the process to a legal standstill if the Ottoman state tried to take the matter to court. In a letter to his publisher, Brockhaus, dated 5 July 1873, he stated that the Ottoman state could do nothing to him because, according to his research. he had learned that no country other than Turkey would decide a case between two foreigners. In short, Schliemann, as in his business life, took what he called 'precautions' and considered all possibilities.

In the petition filed by the Ottoman State, it is stated in the court records that half of the artefacts listed as 12.711 pieces should be shared in accordance with the excavation permit granted to Schliemann, which stipulates that the artefacts are to be divided equally between the two parties. However, Anton Dethier's lawsuit petition does not make mention of the fact that all of the artefacts were in fact illicitly exported abroad. It is possible that this decision was influenced by the Regulation of 7 April 1874, which came into force at the time. However, Schliemann, who was prepared for such a situation, adopted a third strategy in his defence, which resulted in a legal impasse. On 3 May 1874, following hearings on 1 May 1874, the Greek court ruled that it lacked iurisdiction to hear the case of two parties who were not its citizens. According to these documents, which published for the first time in this article, the case came before the Court of First Instance on 1st May 1874. (all dates must be the Julien dates). The decision (1874/977) is dated 3rd May, and was published on 4th May (see, copy of court judgements at the end of the articleImages 1-25) It went before the Court of Appeal on 16th May. Their decision (1874/962) was made on 22nd May, published on 23rd May. (see. English translation of the Athens Case Documents). On 25th May the police and other authorities were authorised to enforce the court's decision that the Trov treasures might, as an interim measure, be seized.

#### **Ending the Court Case**

The court proceedings continued for an extended period, which was contrary to the interests of the Ottoman Empire. Ultimately, following a period of ten months during which the court delivered three separate verdicts, Schliemann was sentenced to pay a sum of 10,000 francs in compensation. The Ottoman Empire was displeased with this outcome, whereas Schliemann was gratified. He even proposed paying 50,000 francs and requested a new excavation permit in return. Following protracted negotiations, the Ottoman Empire consented to settle the case, with the result that the 'Treasure of Priamos' remained in Schliemann's possession (Easton, 1995; 2002 – Aslan, 2024). Safvet Pasha, the Minister of Education at the time, attributed the decision to the favourable stance of the Athens Ambassador, Fotyadi Bey, and the mounting litigation expenses. Subsequent to this resolution, the Ottoman Ambassador to Athens, Fotvadi Bev, entered into an agreement with Schliemann on April 13, 1875, effectively concluding the court proceedings through a settlement, thereby concluding the 'Priamos Treasure Case'.

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## Judgment No. 977 The Athens Court of First Instance

Consisting of: Hon. A. Agathonicos, president, Hon. Th. Fragopoulos, Hon. K. Nakkas, Judges and Hon. J. Eftaxias, junior judge of the Court of First Instance acting as the public prosecutor (due to the absence of the prosecutor and his deputies), as well as the clerk, J. Sakelariou,

On the 1st of May 1874, held an open hearing in the public court, concerning the following case between the following parties:

The **petitioner**, who is the Minister of Public Education of the Ottoman Empire, residing in Istanbul, acting as the representative of the relevant Archaeological Museum, duly represented by his attorneys-atlaw, Mr. P. Paparigopoulos and Z. Psaras, who also appointed Mr. Em. Kokkinos as an attorney during the hearing session, all of them being lawyers,

and

The **respondent**, Mr. Heinrich Schliemann, an American subject, residing in Athens, represented by his attorneys-at-law, Mr. A. Chalkocondylis and Mr. P. Kalligas, lawyers, who also appointed Mr. Balanos and Mr. G.A. Rallis as attorneys during the hearing session.

The petitioner, the Minister of Public Education of the Ottoman Empire, through his attorneys, in his petition, dated 29 April 1874, stated the following to the president of the Court:

That Mr. Heinrich Schliemann, an American subject, in his letter dated 18 June 1871, addressed to the Ministry of Public Education of the Ottoman Empire, requested permission to proceed with the excavation of the region near Dardanelles at the site called Hisarlik, with the aim to actually find the true location of Pergamos, which was a part of the ancient town of Troy. In the same letter, he suggested that in case he was fortunate enough to find any valuable items that would be relics of that ancient Asian civilization (where the comparison between these findings and other similar objects of the European civilization, manufactured during the same period, kept in Greece and other places in Europe, can provide valuable information about the interpretation of that ancient world). he would divide these items in half, by drawing lots in the presence of a representative of the Museum, and give half of them to the Imperial Museum of Turkey and keep the other half for himself.

This suggestion was accepted by the Turkish authorities, and a decision issued by the Vizier, dated 23 Revnil Achir 1288 (Ottoman dated), gave to the above mentioned person the requested permission to proceed with excavating the region around Hisarlik, under the explicit clause that in case any ancient items are discovered, then half of them shall be taken by Mr. Schliemann and the other half shall be given to the Imperial Museum.

Mr. Schliemann started his work and when this had progressed by two thirds, he was fortunate enough to find many ruins and also various other objects, which in his opinion belong to the time of Priam. But he forgot the obligation he had agreed to, and took with him everything he found and brought them here (to Greece) to keep in his house. These findings amount to a total of 12.711 items, described in the attached list.

The fact that the location where all these items were found is under the jurisdiction of the Ministry of Public Education of the Ottoman Empire cannot be disputed by the respondent. But even if this was not a fact. still the site and the soil under which these items laid hidden and specifically this deserted region belong, according to Turkish Law, to the Sultan, who permitted respondent the right to take the undivided half of all discovered items into his ownership; therefore, according to the agreement mentioned above, the Ottoman State, representing the Imperial Museum, also has the undivided ownership of half of these items, and the right to claim them, under Article 1034, par.I of the Code of Civil Procedure, and this right has been recognized by the respondent in the above agreement, which he personally signed.

That respondent is an American subject, therefore a foreigner, under Article 1034, par.4 of the Code of Civil Procedure, and that his home address is different to the one registered with the Ministry of Education of the Turkish Authorities.

That, according to Article 24 of the Treaty signed on 27 May 1855 between Greece and Turkey, any legal disputes which can be raised inside Greece between Ottoman and foreign subjects can be tried by the courts in both these states, in accordance with

the current laws, principles and provisions applicable in more law-abiding countries.

Already, according to the Treaty signed on 22 September/4 October 1837 (Article 11) between Greece and England, and the Treaty signed on 20 February/2 March 1835 (Article 9) between Greece and Austria, the subjects of these states (England and Austria) are permitted to free and easy access to the (Greek) courts, to pursue to claim their legal rights and are to enjoy where justice is concerned exactly the same privileges and rights as native subiects. The writers Oikonomidis (manual: par. 45, page 131, footnote) and Father (illegible name) (page 426) in their interpretation of the Treaties between Austria and England and Greece, state that any disputes that concern English and Austrian subjects fall under the jurisdiction of Greek courts, based on the above mentioned Treaties (see Father, page 428, Art. 1, B) and Oikonomidis par. 45, page 131.

Therefore, if this case concerned English or Austrian subjects, they would be entitled to file a complaint against another foreign subject (in this case it concerns an American subject) and they would enjoy the same rights as any Greek subject, who is entitled to take any foreign subject to court. In the same manner it is implied, under Article 24 of the Treaty signed between Greece and Turkey, that the same rights should be enjoyed by all Ottoman subjects, and particularly by the Ottoman Government, in accordance with the current laws, principles and provisions applicable in more law-abiding countries, which England and Austria are.

Based on the above reasons, in accordance with Article 27 of the Code of Civil Procedure (in combination with Article 24 of the Treaty between Turkey and Greece and Article 9 and 11 of the Treaties with Austria and England), which defines that foreign subjects are permitted to be indicted to the Greek courts by other foreign subjects, when the Treaties signed by the (Greek) State provide such an exception – in this case these conditions are fulfilled: therefore it falls under the jurisdiction of the Greek courts to try this specific case between the Ottoman State and Mr. Schliemann, regardless of the precautionary seizure of the found items. The petitioner requests to be given permission to carry out precautionary seizure of the items kept by respondent in his house, which were found during the excavations at the above mentioned site, which according to the respondent's opinion was the location of ancient Troy; the following list contains these items, which the Turkish authorities intend to claim

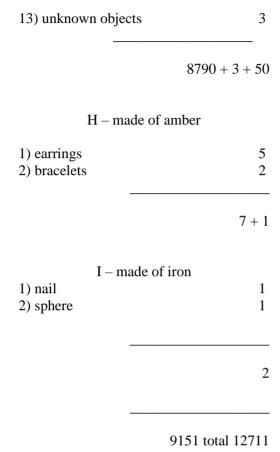
The list of these items is the following:

#### A – made of bone

1) two men's skulls	2
2) one skull of a woman	1
3) one skeleton of an unborn baby	1
4) one dented bone	1
5) one bone depicting a musical	instru
ment 1	
6) one saw	1
7) one hammer	1
8) six scepter handles	6
9) six dummies	6
10) five styli	5

11) thirteen knives 12) seventeen buckles 13) fourteen sharp objects 14) one sphere 15) one fossil bone 16) fifteen nameless objects	13 17 14 1 1 15
B – made of ivory	
<ol> <li>three figurines</li> <li>one tube</li> <li>21 buckles</li> <li>3 rings</li> <li>2 flutes</li> <li>2 parts of a lyre</li> <li>49 various and nameless objects</li> <li>1 stylus made of deer horn</li> <li>1 wooden stylus</li> </ol>	3 1 21 3 2 2 49 1
Total amount of items 180	180
C- made of clay  1) spindles commonly shaped  2) spindles uncommonly shaped  3) spindles not complete  4) seals 20  5) amphorae, drinking cups, small plates, etc.	299 824 8 20 1450
D – made of stone	
D – made of stone	
made of marble     a) pieces without inscription     b) figurines	7 184
	191
2) made of blue stone	

<ul><li>a) figurines</li><li>b) weapons</li><li>c) tools</li></ul>	42 358 150	<ul><li>v) water boiler</li><li>w) shield</li><li>x) items probably coins</li></ul>	1 1 9
	508	y) copper piece z) undescribed items	1 12
E – made of metal			295
1) made of lead		F – made of silver	
a) shapeless pieces	3		
b) nails thirteen	13	1) buckles	2
c) small plates	2	2) bracelets	6
d) cone	1	3) rings	3
		4) small versae	4
		5) phiales	3
		6) drinking cups	2
	19	7) vessels without handle	6
		8) basins	2
2) made of copper		9) talents	6
a) lances	20	10) coin	1
b) arrows	16	11) unknown objects	2
c) axes	38		
d) knives	30		
e) swords or daggers	9		38 + 1
f) nails	41		
g) buckles	73		
h) saws	3	G – made of gold	
i) talents	6		
j) key	1	1) knife	1
k) anchor	1	2) head-dress	1
l) bracelets	5	3) diadem	1
m) rings	9	4) key for belt	1
n) rod	1	5) buckle	1
o) disk	1	6) bracelets	6
p) sphere	1	7) ring	1
q) small plate	1	8) earrings	68
r) drinking cups	6	9) flower-shaped buttons	8701
s) cover	1	10) drinking cups	2
t) vessel for grape must	1	11) illegible	1
u) sieve	1	12) tablet	1



The above petition was filed to the president of the court, who was not to make a decision himself, and therefore he referred it to the court and set this day as the trial date. Today present are the representatives of the two parties, with their written statements; the petitioner requests for his request to be accepted and the trial expenses to be covered by the other party and the respondent requests for the request to be denied and the representatives of the Turkish Authorities to cover the trial expenses.

The court heard all the oral testimonies and read the attached documents and took into account the view of the prosecutor.

The court has studied the case

And considered it according to the Law

Whereas the domestic courts do not have jurisdiction to try any disputes between foreign subjects, other than those specifically described as an exception in Article 27 of the Code of Civil Procedure

Whereas when considering the combination of Articles 27 and 19 of the Code of Civil Procedure, the court which has the jurisdiction for a territory where the seizure of any object takes place has to decide about this act, when this seizure is carried out against any foreign subject whose property was seized within the (Greek) territory. However, this provision, which concerns the dispute regarding seizure, only applies in cases when the Greek courts have the jurisdiction to decide on the overall case. Therefore, if the decision on the overall case, the specific request of the petitioner, does not fall under the jurisdiction of the court, based on the fact that it involves an agreement signed between foreign subjects in foreign territory, before the court can decide on the requested precautionary measure it must first take into account and examine the document on which the overall case depends. And based on this document it does not fall under the jurisdiction of the court.

Accordingly it would not make any sense if the court would decide not about the overall case, the specific request, but about the outcome of the petition, which is the

precautionary seizure, according to the rule "accessorium sequitur principale". Furthermore, in case the judge would pass judgment on the issue of precautionary seizure, this would create a precedent, regarding the jurisdiction over all other disputes between foreigners; this then would transform what is so far an exception into a general rule, which clearly opposes the intention of the law-maker, which permits foreign subjects to be tried by domestic courts by exception [see Father, page 431, Pager J. Saisie, arret par. 521-523, Carre vol. 4, p. 1959, quator: zacharie J. 5. 748, bis, and also see the decision "de la cour de Bordeaux: 16 Aout 1817].

In case someone would question the above and bring up the above provisions in combination with Articles 923, 919, 920, 927, 1034, par. 4 1035 of the Code of Civil Procedure, and suggest that a foreign subject in Greece has the right to request- in the same manner as a native petitioner – the enforcement of a precautionary seizure measure against a foreign respondent, and that the Greek courts should issue the relevant permission under the same conditions as this would apply for or against any native Greek person; then it should be mentioned that the defined exception regarding foreign subjects [comb. 47 Art. 19.5.27 Code of Civil Procedure] would not make any sense, which is that in essence the court has the authority to reject the hearing of this petition.

Regarding the reasons that petitioner calls upon, which in his opinion give full jurisdiction to the Greek courts, our view is that Article 24, which is part of the Treaty between Greece and Turkey, dated 27 May 1855, only aims to establish similar procedures for Ottoman subjects as for Greek or foreign subjects when they are indicted. These procedures should be not arbitrary but in full accordance with the principles, laws and provisions which are applicable in more law-abiding countries. But the above clause is not giving us specific jurisdiction to oppose the existing Code of Civil Procedure.

Regarding Article 11, which is part of the Treaty between Greece and Great Britain, dated 22 September 1837, as well as Article 9, which is part of the Treaty between Greece and Austria, dated 20 February 1835, based on which the subjects of these states are entitled to free and easy access to the (Greek) courts, and are, where justice is concerned, to enjoy exactly the same privileges and rights as native subjects; these articles do not establish a general and overall iurisdiction of the Greek court, they rather directly relate with issues pertaining to shipping and commercial rights of the mentioned countries. So, they clearly concern the awarding of justice in those cases where the relevant courts have the jurisdiction to judge; however, in this case the specific respondent is an American subject. and the above mentioned treaties are not relevant in any way, because our government did not sign a Treaty with his government.

Furthermore, the respondent, Heinrich Schliemann, did not in any way place himself under the jurisdiction of the Greek courts; if this had occurred then we would have to apply the last clause of Article 27

of the Code of Civil Procedure. Because he personally states that by majority he resides in the city of Paris, where he owns a great fortune, and on the other hand the petitioner states explicitly that the person who is central in the petition is the Schliemann who resides in Athens.

Further, the act on which this specific request is based, which the petitioner claims that the respondent did commit, does not fulfill the requirements of Article 22 of the Code of Civil Procedure, because it does not concern an act committed within the territory that falls under the jurisdiction of the Greek courts, but in foreign territory by foreign subjects.

Based on all which is described above the Court rejects the petition that is publicly discussed in this hearing today, because it does not fall under the jurisdiction of this Court to accept and examine the petition against Heinrich Schliemann.

Because Mr. Schliemann did not submit a list of trial expenses to the Court, the Court will not order them to be covered by petitioner.

#### Now therefore, considering the provisions of law and the file of proceedings

The Court rejects the petition, dated 29 April 1874, submitted by the archaeological Ottoman Museum, as unacceptable. This was judged and decided in Athens on 3 May 1874.

The President (signature)

The acting Clerk (signature)

The judgment was published in Athens on 4 May 1874
The President (signature)

The acting Clerk (signature) (official stamp)

# GENERAL ARCHIVES OF THE STATE Ref. No. 50141/2-2-1994 This is an exact copy from the original Decision of the Athens Court of First Instance No. 977/1874 Given to Mr. Evangelos Giannakopoulos

THE DIRECTOR (signature)

Athens, 2 February 1994

Judgment No. 962/37600

### NIKOLAOS KARAPIDAKIS In the name of the King of the Greeks, George the First

# The Athens Court of Appeal [an exact copy, Ref. No. 657, was given to lawyer P. Paparigopoulos, Athens, 1 June 1874

(signature)]

Consisting of: Hon. A. Athanassiades, president, and Hon. P. N. Pavlopoulos, Hon. G. D. Karytinos, Hon. Io. Diovouniotis and Hon. St. Andropoulos,

On the 16th of May 1874, held an open hearing in the public court; present were also the Public Prosecutor, Mr. Ev. Louriotis and the acting Clerk A.I. Vassileiou, concerning the following case between the following parties:

The **appellant**, who is the Minister of Public Education of the Ottoman Empire, residing in Istanbul, who acts as the representative of the relevant Imperial Archaeological Museum, who is duly represented by his attorneys-at-law, Mr. Em. Kokkinos and P. Paparigopoulos, lawyers,

and

The **appellee**, Mr. Heinrich Schliemann, an American subject, residing in Athens, represented by his attorneys-at-law, Mr. A. Chalkocondylis and Mr. P. Kalligas, Mr. A. Balanos, Mr. G. Rallis and Hl. Potamianos, lawyers.

The Minister of Public Education of the Ottoman Empire, who represents the relevant Archaeological Museum, in his petition, dated 29 April 1874, addressed to the President of the Athens Court of First Instance, the judgment which he is now asking to be reviewed, stated the following:

That Mr. Heinrich Schliemann, an American subject, in his letter, dated 18 July 1871, to the Ministry of Public Education of the Ottoman Empire, requested permission to proceed with the excavation of the region near Dardanelles, a site called Hisarlik, with the aim to actually find the true location of Pergamos, which was a part of the ancient town of Troy. In the same letter,

he suggested that in case he was fortunate enough to find any valuable items that would be relics of that ancient Asian civilization (where the comparison between these findings and other similar objects of the European civilization, manufactured during the same period, kept in Greece and other places in Europe, can provide valuable information about the interpretation of that ancient world), he would divide these items in half, by drawing lots in the presence of a representative of the Museum, and give half of them to the Imperial Museum of Turkey and keep the other half for himself. This suggestion was accepted by the Turkish authorities, and a judgment issued by the Vizier, on 23 Revnil Achir 1288 (Ottoman dated), gave to the above mentioned person the requested permission to excavate the area around Hisarlik. under the explicit clause that in case any ancient items are discovered, then half of them shall be taken by Mr. Schliemann and the other half shall be given to the Imperial Museum.

Mr. Schliemann started his work and when this had progressed by two thirds he was fortunate enough to find many ruins and also various other objects, which in his opinion belong to the time of Priam. But he forgot the obligation he had agreed to, and took with him everything he found and he brought it here (to Greece) to keep in his house. These findings amount to a total of 12.711 items, described in the list below, as part of the petition.

The fact that the location where all these items were found is under the jurisdiction of the Ministry of Public Education of the Ottoman Empire cannot be disputed by the appellee. But even if this was not a fact, still the site and the soil under which these items laid hidden and specifically this deserted region belong, according to Turkish Law, to the Sultan, who permitted appellee the right to take the undivided half of all discovered items into his ownership; therefore, according to the agreement mentioned above, the Ottoman State, representing the Imperial Museum, also has the undivided ownership of half of these items, and the right to claim them, under Article 1034, par.I of the Code of Civil Procedure, and this right has been recognized by the appellee in the above agreement, which he personally signed. That appellee is an American subject, therefore a foreigner, under Article 1034, par.4 of the Code of Civil Procedure, and that his home address is different to the one registered with the Ministry of Education of the Turkish Authorities.

That, according to Article 24 of the Treaty signed on 27 May 1855 between Greece and Turkey, any legal disputes which can be raised inside Greece between Ottoman and foreign subjects can be tried by the courts in both these states, in accordance with the current laws, principles and provisions applicable in more law-abiding countries. Already, according to the Treaty signed on 22 September/4 October 1837 (Article 11) between Greece and England, and the Treaty signed on 20 February/2 March 1835 (Article 9) between Greece and Austria, the subjects of these states (England and Austria) are permitted to free and easy access to the (Greek) courts, to pursue to claim their legal rights and are to enjoy where justice is concerned exactly the same privileges and rights as native subjects. The writers Oikonomidis (manual: par. 45, page 131, footnote) and Father (illegible name) (page 426) in their interpretation of the Treaties between Austria and England and Greece, state that any disputes that concern English and Austrian subjects fall under the jurisdiction of Greek courts, based on the above mentioned Treaties (see Father, page 428, Art. 1, B) and Oikonomidis par. 45, page 131.

Therefore, if this case concerned English or Austrian subjects, they would be entitled to file a complaint against another foreign subject (in this case it concerns an American subject) and they would enjoy the same rights as any Greek subject, who is entitled to take any foreign subject to court. In the same manner it is implied, under Article 24 of the Treaty signed between Greece and Turkey, that the same rights should be enioved by all Ottoman subjects, and particularly by the Ottoman Government, in accordance with the current laws, principles and provisions applicable in more law-abiding countries, which England and Austria are.

Further, in accordance with Article 27 of the Code of Civil Procedure (interpreted in combination with Article 24 of the Treaty between Turkey and Greece and Article 9 and 11 of the Treaties with Austria and England), which defines that foreign subjects are permitted to be indicted in the Greek courts by other foreign subjects, when the Treaties signed by the (Greek) State provide such an exception – in this case these conditions are fulfilled;

therefore it falls under the jurisdiction of the Greek courts to try this specific case between the Ottoman State and Mr. Schliemann, regardless of the measure of precautionary seizure.

The Minister of the Turkish authorities, in his capacity as representative (of the Archaeological Museum), comes to the Greek Court and submits himself to Greek Justice and requests to be given permission by the President of the Court to carry out precautionary seizure of the items kept by appellee in his house, which were found during the excavations at the above mentioned site, which according to appellee's opinion was the location of ancient Troy; the following list contains these items, which the Turkish authorities intend to claim.

#### The list of these items is the following:

#### A – made of bone

1) two men's skulls	2
2) one skull of a woman	1
3) one skeleton of an unborn baby	1
4) one dented bone	1
5) one bone depicting a musical	instru-
ment	1
6) one saw	1
7) one hammer	1
8) six scepter handles	6
9) six dummies	6
10) five styli	5
11) thirteen knives	13
12) seventeen buckles	17
13) fourteen pointed objects	14
14) one sphere	1
15) one fossil bone	1

16) fifteen nameless objects	15
	86
B – made of ivory	
1) 3 figurines	3
2) 1 tube	1
3) 21 buckles	21
4) three rings	3
5) two flutes	2 2
6) two parts of a lyre	
7) 49 various and nameless objects	49
8) one stylus made of deer horn	1
9) one wooden stylus	1
Total amount of items	180
C – made of clay	
1) spindles commonly shaped	299
2) spindles not complete	8
3) spindles uncommonly shaped	824
4) seals	20
5) amphorae, skyphoi,	
small plates, etc.	1450
-	2601
D – made of stone	
<ul><li>1) made of marble</li><li>a) pieces without inscription</li><li>b) figurines</li></ul>	7 184
	191

2) made of blue stone		o) disk	1
a) figurines	42	p) sphere	1
b) various weapons	358	q) small plate	1
c) tools	150	r) drinking cups (skyphoi)	6
		s) cover	1
		t) vessel for grape must	1
	508	u) sieve	1
		v) water boiler	1
d) templates for construction	of	w) shield	1
weapons and metal tools	38	x) items probably coins	7
		y) copper piece	1
		z) undescribed items	1
	778		
E – made of metal			295
a) shapeless pieces	3	3) – made of silver	
b) nails	13	a) buckles	2
c) small plates	2	b) bracelets	6
d) cone	1	c) rings	3
		d) small versae	4
		e) phiales	3
		f) drinking cups (skyphoi)	2
	19	g) vessels without handle	6
		h) basins	2
2) made of copper		i) cover	1
a) lances	20	j) talents	6
b) arrows	16	k) coin	1
c) axes	38	1) unknown objects	2
d) knives	30		
e) swords or daggers	9		
f) nails	41		
g) buckles	73		38 + 1
h) saws	3		
i) talents	6	4) – made of gold	
j) key	1		
k) anchor	1	a) knife	1
l) bracelets	5	b) head-dress	1
m) rings	9	c) diadem	1
n) rod	1	d) key for belt	1

e) buckle f) bracelets g) rings h) earrings j) flower-shaped buttons i) drinking cups (skyphoi) k) unclear l) tablet m) unknown objects	1 6 2 68 8701 2 1
in) diikilowii objects	
8790 +	3 + 50
5) – made of amber	
<ul><li>a) earrings</li><li>b) bracelets</li></ul>	5 2
	7 + 1
6 – made of iron a) nail b) sphere	1 1
	2
	9151
	12710

The president of the court, upon receiving the above petition, hesitated to come to a judgment himself, and therefore referred it to the Court of First Instance, which after the public hearing of the case issued judgment No. 977, in which the Court rejected the above petition as inadmissible.

This judgment is submitted to our Court by the Minister of Public Education of the Ottoman Empire in his above mentioned capacity, in his appeal, dated 10 May 1874; appellant requests for the above judgment to be revised, for his petition dated 29 April 1874 to be accepted and to be given permission to proceed with the precautionary seizure of the items listed in detail and also for appellee to cover the expenses of both trials, at the first and second degree.

This is the background of this case which is discussed today in a public hearing by our Court; at the beginning of this hearing the representatives of the two parties requested, through their written suggestions, the following:

The representatives of the appellant requested his appeal to be accepted, the previous judgment to be revised, and his petition as of 29 April 1874 to be fully accepted and to receive permission to proceed with precautionary seizure of the above listed items and appellee to be convicted to full coverage of the expenses of the court trials at the first and second degree.

The representatives of the appellee requested the acceptance of the claims included in his suggestion, which he is fully capable of proving, and when necessary to certify

under oath, and generally the complete acceptance of the claims and petitions which are included in his suggestions.

The Court heard the oral presentation of both views relating to this case, and took into account the view of the Prosecutor

#### Now therefore, upon due consideration of the file of proceedings and the provisions of law

According to document Ref. No. 17918, dated 6 April 1874, issued by the public notary, Mr. G. Afentakis, the facts are that: Mr. Philippe Zitier, director of the Imperial Archaeological Museum, located in Istanbul, as a representative of the Minister of Public Education of the Ottoman authorities, according to the document issued on 2 March 1874, which is attached, and also ambassador of the Ottoman State, in this capacity appointed their lawyers as representatives in the present case.

Therefore the claim of the appellee that the mentioned Museum is represented by the person appointed based on the above Decree, in accordance with the legislation and the customs of Turkey, will be accepted as true. However, appellee's objection that the Minister of Education, who is actually represented, did not receive proper authorization to represent the mentioned Museum, will be rejected as untrue. Because the assurance given in the documents submitted by the above mentioned public officials, in their capacity as public servants, and specifically the statement given by the ambassador, the authorized Minister, who in general is representing the Sultan and his entire government, gives our Court enough proof and makes any other counterproof unnecessary. Therefore we decide that the objection of the appellee, in which he claims that this appeal should not be accepted by our Court, is unfounded and rejected, because it is legally founded.

According to Articles 618, par.1, 1041 and 1027 of the Code of Civil Procedure the Court of First Instance is entitled to decide on the petition of precautionary measures, including seizure, under Article 1029, and on disputes and differences concerning any such seizure. In the Court of First Instance the President hesitated to come to a judgment and took the case to a public hearing, according to Article 635, where it was decided that deciding in this particular case does not fall under the jurisdiction of the Court, in which case Article 638 - which does not allow any appeal against the judgment of the President, would be applicable. However, it is justified, regarding procedures on precautionary measures, under the above mentioned Articles, to revise the judgment of the Court of First Instance; therefore, based on Articles 623 and 661. the above judgment can be reviewed and we deem appellee's objection to the appeal process inadmissible.

According to Article 27 of the Code of Civil Procedure, foreign subjects are permitted to be indicted in the Greek courts by other foreign subjects by exception, only in the specific cases described in Articles 19, 20 & 22, par.3, 4, 5 - 7, which establish an exceptional right in favour of native subjects. Because of the reference in Article 19, which does not define an exception in

the same cases, it becomes obvious that foreign subjects enjoy the right of seizure, as mentioned in its fifth paragraph, in exactly the same manner as native subjects. Because if the legislator wanted to exclude foreign subjects from this specific right mentioned in this paragraph, then it would be mentioned in the reference included in Article 27.

Therefore, in the same manner that native subjects, who want to seize the property of a native fugitive who does not have a permanent place of residence in the (Greek) territory, or the property of a foreign subject, who may also not have his permanent place of residence in the (Greek) territory, are permitted to request for relevant seizure as part of their overall petition, from the Court which has the jurisdiction for the territory where the seizure is carried out, foreign subjects also have the same rights regarding seizure of property of foreign subiects. This is because the Law does not differentiate in any way between native and foreign subjects where the issue of seizure is concerned

The view given by the Court of First Instance and also suggested by the appellee, that this exceptional permission only applies to foreign subjects when they are entitled to indict foreigners in accordance with the rest of the cases described in Articles 19, 20 & 22, par.3,4,5-7, is incorrect. Because, if this was the intention of the Law, then Article 27 would have included an exception of the fifth paragraph of Article 19, which specifically defines the right of seizure both for natives and foreigners. The phrase written in the German text "whose

property can be seized in the territory" does not refer to the cases where native subjects can indict native subjects – which is what the appellee claims – but to the cases where seizure is permitted in accordance with Articles 885 and 1034. This meaning is rather obvious because the same phrase also refers to native subjects.

Thus, because native subjects are always permitted to indict foreign subjects in the Greek Courts, according to Article 28 – but not those who committed the offense outside the territory (Article 26) – and also native subjects, the word "permitted" surely refers to the permission to seize, because not in all cases properties will be seized under Articles 26, 885 and 1034.

Also appellee's claim that by issuing a positive judgment in this case we would transform the general rule on the meaning of exception defined in Article 27, is deemed untrue. Also the view of the Court of First Instance about the major issue following the minor is not valid. On the one hand because even if the exception only pertained to the procedure of seizure, still the rule defined in Article 27 remains the same with the exceptions described in Articles 19, 20 & 22. On the other hand because in the exceptional case of a seizure, jurisdiction exclusion is explicitly established for the main request, due to such seizure.

Based on the above, it was erroneous that the Court of First Instance rejected the specific petition on the ground that it did not fall under its jurisdiction, and it is valid to proceed with examining the appeal as well. It would be possible to say that the Ottoman Archaeological Museum submitted a request against Heinrich Schliemann (who is indeed an American subject) to receive half of the ancient, movable items discovered in Troy by Heinrich Schliemann, which he subsequently transported to Athens; according to the applicable civil procedure it is not allowed to proceed with precautionary seizure of these movable items belonging to H. Schliemann (this concerns a case between one foreign subject and another foreign subject).

Because on the one hand par. I. Article 1034 of the Code of Civil Procedure defines the cases when a request concerning seizure is permitted to be judged by the Greek courts; on the other hand Article 27, in combination with Article 19, par. 5 b', defines the cases when it is permitted to seize items in Greek territory which belong to a foreign subject. \* 20. 22 No. 3-7, the cases about immovable property and personal claims are accepted to be tried by the Greek courts. Thus, before examining whether according to the Law it is possible to try this case concerning the main request of the Ottoman Archaeological Museum and before proving that this is so, it is obviously not permissible to proceed with the measure of precautionary seizure.

Apart from the above, if we would accept the solution given by the Court of First Instance that the domestic courts do not have the jurisdiction to judge this case in essence, then they also do not have the jurisdiction to allow the relevant seizure and neither to issue a judgment concerning the relevant disputes resulting from this seizure. Therefore we need to take into consideration the general principles of domestic and also international law which are applicable in all law-abiding countries, that the property of the debtor, no matter where it is, is deemed to be and shall be kept as a guarantee in favour of the claims of the creditor, and that subjects of all nations should be treated with the same justice, and that all movable property falling under the jurisdiction of any state should be governed by the Laws of the State where that property is.

We must also take into consideration that in case of liquidation of property or any other relevant exchange Articles 19, par.4, 858 & 859 par.1 of the Code of Civil Procedure are applicable; these define the principle that foreign subjects are allowed inside domestic territory to proceed with measures against foreign subjects, without any investigation as to the content of the property; and that after the seizure it is under the jurisdiction of the Greek courts that any disputes pertaining to the seizure are being solved. Therefore our domestic law does not explicitly forbid foreign subjects to proceed with precautionary measures when this measure is related to a specific claim.

Taking into account that foreign courts are not authorized to judge such a case, when the disputed property is not within their own jurisdiction, but it is in our territory, then it would be unfair for Greek courts not to judge such a case. Because if the courts of their country would give permission to any foreign subjects to proceed with the said measures, and the legislation in our

country also supports such an outcome of a case, then if our courts would not issue a permission for seizure, they would offer asylum to malicious debtors and to others who take advantage of illicit exchanges.

This solution to issues like this is also supported by currently applicable French legislation, and other renowned writers, even though the provisions of Article 27 and 19 par. 4,5 of our legislation are not included in the French Law (see Roger par. 156 207.3, 520-521, Dalloz droit civile p. 331, Saisie arret, par. 304 Boetix par. 162, 163, Demol 261, par.4). Therefore the Court of First Instance issued the erroneous judgment that to judge this case does not fall within its jurisdiction.

The seizure of the property is based on the reasons that appellant wishes to claim ownership of the items to be seized and that appellee keeps them in his own residences. The appellant, with the intention to prove ownership of these items, brings up the letter dated 18 June 1871, written by appellee; in this letter he requests permission to carry on with the excavation of the site and promises to share by half with the Archaeological Museum of Turkey all the antiquities found in the area of Troy and also the judgment issued by the Vizier, on 23 Revnil Achir 1288 (Ottoman dated), addressed to the Commander of the Archipelago (Aegean Sea), in which he accepts the suggestion of appellee and gives him permission to excavate. Therefore, according to Articles 1034 par. 1 and 3, 1036 and 1028 of the Code of Civil Procedure this specific petition is both justified and accepted.

Whereas the requested seizure is not based on the risk of removing the items to be seized; this is mentioned because appellee claims that in this case there is no such a risk, and appellee's attorney is willing to state under oath that such a risk of removing the items is not imminent.

The law demands only a simple statement of ownership of the items to be seized and not a full proof of ownership. And this statement is forwarded by the appellant, and it is not in any way disputed by the appellee that the items described in the request to the Court are those found during the excavations in Troy.

According to Article 1036 all property requested to be seized should be accurately described; all the items mentioned in the petition are listed with precision apart from the items numbered 4, m) made of gold, which are unknown in number and nature. Therefore we only accept appellee's objection concerning these specific items.

#### Based on the above

The Court rejects appellee's objection about admissibility of the appeal, based on legal grounds of the judgment under revision.

The Court accepts the appeal Revises the judgment of the Court of First Instance, No. 977 Rejects appellee's objection on the ground of non-jurisdiction (for the Court to try the initial petition)

Having accepted this petition,

The Court permits the Minister of Public Education of the Ottoman Empire, who is representing the Archaeological Museum in Istanbul, to proceed with precautionary seizure of the objects kept in the residence of the appellee, which are discovered in Troy and are mentioned in detail in the attached list.

The Court also decides to reject appellee's objection about the items numbered 4 m) made of gold as unknown objects.

The Court orders appellee to cover all court expenses caused by the appellant for both the first and the second degree, which amount to sixty (60) drachmas, plus the stamp expenses.

This was judged and decided in Athens on 22 May 1874.

The President (signature)

The acting Clerk (signature)

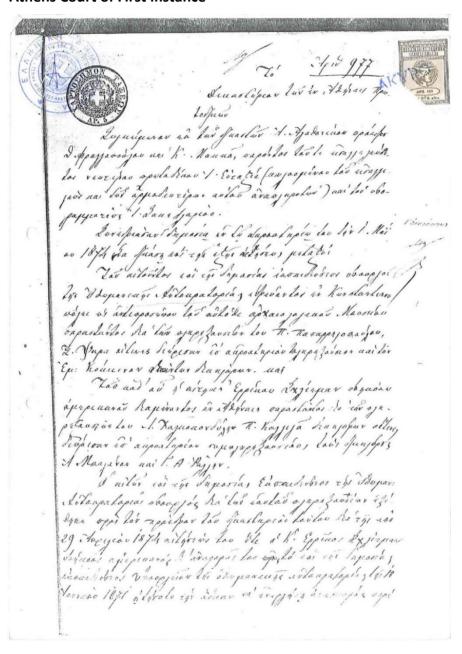
It was published on 23 May 1874 The President (signature) The acting Clerk (signature)

The Court orders everyone involved to execute the above judgment; the bailiff to deliver it, the prosecutors to act their part and all Commanders and other officers of the public forces to act in an assisting manner.

For the certification of the above the Judges of the Court and its Secretary have signed the original copy of this judgment.

Athens, 25 May 1874 (signatures)

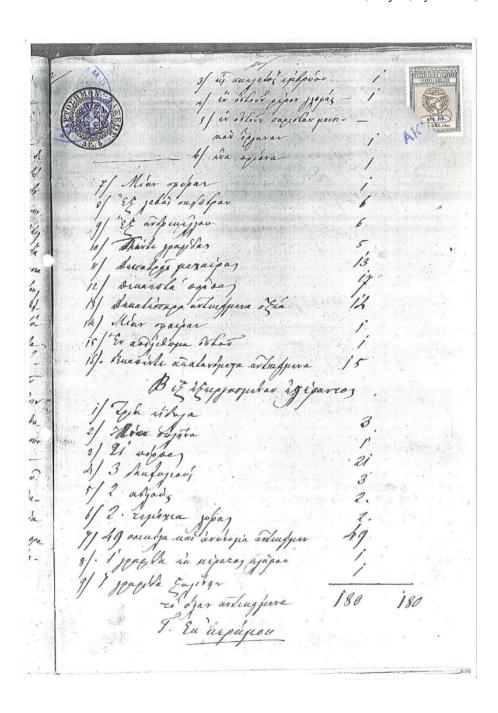
#### **Athens Court of First Instance**



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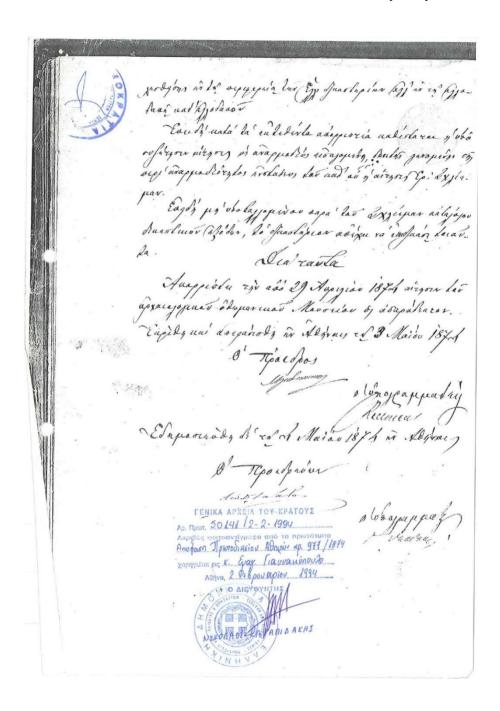
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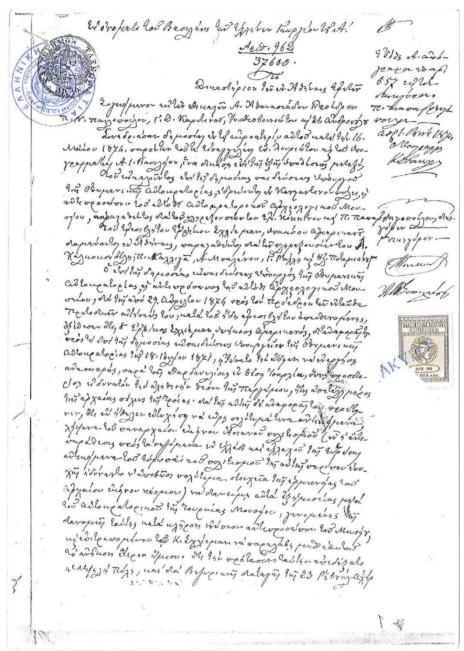
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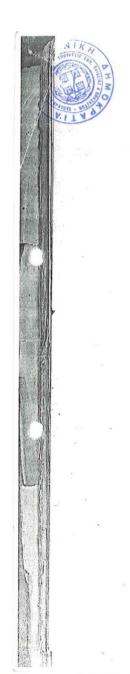
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#### **Athens Court of Appeal**





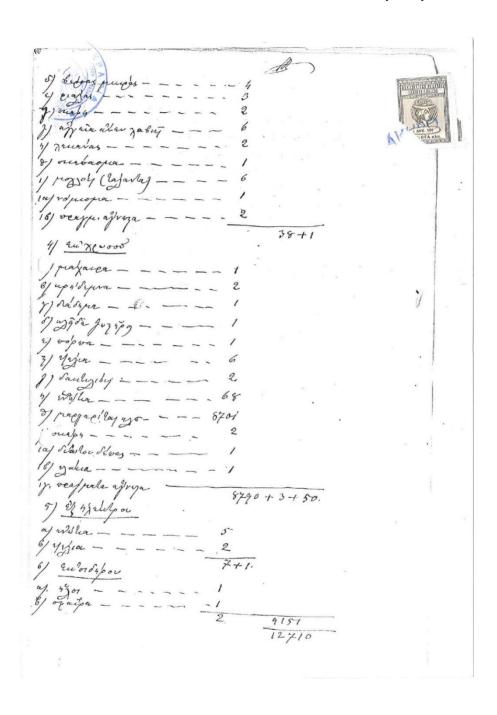
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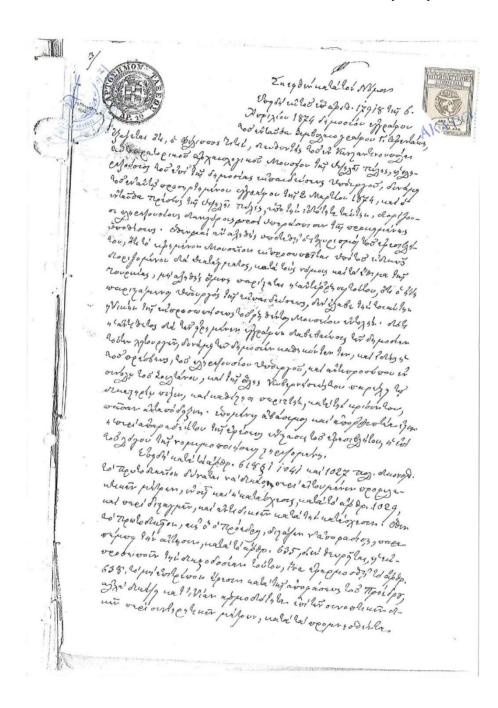
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roid as alway sly la epososola late vod Nopeou long at dalaty, his \$304. Boelix \$ (62, 163. Demof 261 \$4) . down up in 28 2000 veduglas midendi who la walayedishe, us the daproty of if orafogoz nalordian. ved indibation dilaginged les lo weedy dudunger Parl 2000 18. Berlow 1841 avagopan 200 efec orlythe, Alis alfa lad alfan hij araous pring wood ofthe ra danges it oficios para los apropojenos movorlos Instruction has adaceage or or plana in roads, approble les, real gradio 23 Perois Atho 1288 Experience injoxin lubara occaçui, donn la disegoroppelors was deult ezin se weong juris allow wald an alpop. 1034 \$1 /3. 1036 ref Eng of sallocours wellangery of greifele ver led use Sutoc In aday ge for wale oxilin. Other And eadifyour

