[BELCHER, C.J., DICKINSON, J., FUAD, J.]

BELCHER, C.J., DICKINSON, J., FUAD, J. 1928. June 30.

HARALAMBOS K. ECONOMIDES

v.

DEMETRI PETRI TRIMATOS.

CIVIL PROCEDURE—LAW 10 OF 1885, SECTION 21—CYPRUS COURTS OF JUSTICE ORDER, 1927—RULES OF COURT, ORDER XXI., RULE 8—TIME FOR LODGING AN APPEAL—ORDER MADE ON 29TH NOVEMBER, 1927—NOTICE OF APPEAL LODGED AND SERVED ON 29TH DECEMBER, 1927.

Mitsides for appellant (plaintiff).

Demetriades for respondent (defendant).

Demetriades: I have a preliminary objection. The service on respondent was not made in time, *i.e.*, within one month of the order made becoming binding on respondent. The order was made on the 29th November, 1927, and the notice of appeal served on the 29th December, 1927.

Held: The service of the notice of appeal was in time.

[BELCHER, C.J., DICKINSON, J., FUAD, J.]

BELCHER, C.J., DICKINSON, J., FUAD, J. 1928. July 3.

RENE DE SUMERER

v.

THE OTTOMAN BANK.

JURISDICTION—APPLICATION TO STAY PROCEEDINGS—ABUSE OF PROCESS—INHERENT JURISDICTION——PLAINTIFF AN EMPLOYEE OF THE DEFENDANT BANK RESIDING AT CONSTANTINOPLE—BORN THERE—ENGAGED THERE—WORKED ALL HIS COMMERCIAL LIFE THERE—RETIRED FROM SERVICE OF DEFENDANT BANK THERE—ALLEGED BREACH OF CONTRACT TOOK PLACE THERE.

(*Logan v. The Bank of Scotland*, (1906) 1 K.B., 141, compared.)

Appeal by defendant Bank from the order of the Divisional Court sitting at Nicosia, dismissing the application of defendant Bank.

Artemis and *Clerides* for appellant.

Chrysafinis and *Triantafyllides* for respondent.

The facts are sufficiently disclosed in the judgments.

Judgment of Dickinson and Fuad, JJ. This is an appeal from the order of the Divisional Court sitting at Nicosia (Lucie-Smith and Sertsios, JJ.) dismissing the application

BELCHER, C.J., DICKINSON, J., FUAD, J.

RENE DE SUMERER v. THE OTTOMAN BANK.

of the defendant Bank asking the Court to stay this action on the ground that it is frivolous, vexatious and embarrassing to the defendant, and an abuse of the process of the Court.

This Court has already held in **Esmerian* v. *The Ottoman Bank* that there is inherent jurisdiction in every Court to see that its process is not abused, and there is no dispute on this point, and it is under this jurisdiction that evidence by affidavit may be received to show that proceedings instituted are an abuse of the process of the Court.

The facts disclosed in the writ of summons, pleadings and affidavits are as follows:—

Plaintiff is an ex-employee of the defendant Bank recently retired on pension, and he is dissatisfied with the amount of the pension offered him by the Bank under a contract made between him and the Bank, and he has brought this action in respect of an alleged breach of that contract.

He was born in Constantinople, engaged there by the Bank, and he has since worked there in the Bank for about forty years, eventually rising to one of the senior appointments, the secretaryship to the Direction Générale at the Constantinople office.

Plaintiff has no connection with Cyprus at all, and he has shown in his pleadings and affidavits and the statement in Court through his counsel that his intention is to reside permanently in Constantinople.

Having heard that certain Cypriots had been successful in the Cyprus Courts in getting a higher *pro ratâ* pension than the Bank has offered him, he has come to Cyprus with the view to seeing if he can be equally successful (*vide* para. 14 of plaintiff's affidavit of 7.3.28).

He issued a writ of summons against the branch of the Ottoman Bank in Nicosia, a place he has never worked in, and the local director of the Bank, Mr. Jones, in his affidavit swears that he knows nothing of the conditions of plaintiff's service, and that the defendants are embarrassed and oppressed in defending the action in Nicosia, that the plaintiff is not *bonâ fide* and that there are Courts in Constantinople competent to deal with this claim, which, if it has any substance at all, arises out of an alleged breach of contract which took place in Constantinople. Mr. Jones further claims that it will be a matter of serious expense to the Bank to fetch witnesses from Constantinople, in order that the defence to the claim may be stated clearly and fully.

---

* Reported on page 93 *ante*.

Plaintiff's advocate answers on this point that the main issue to be decided is the interpretation of the contract which the parties entered into, and which is in common form with reference to all Bank employees, that it has already been interpreted by the Cyprus Courts in the case of Baldassare, and that the same matter may have to be decided in the case of *Esmerian* v. *The Ottoman Bank* at present pending. Further that if the Bank bring material to defend that action of Esmerian, they will not be embarrassed in using the same material in the present case.

The Bank replies that, even if for various reasons peculiar to the case of Esmerian, they find themselves bound to defend that case in the Cyprus Courts, it would not be fair that they should be forced to do so in the present case where those reasons do not exist and to their prejudice and embarrassment.

The Court below refused the application on the ground that the Bank has not satisfied them on the following three points:—

(1) That the Bank would be so embarrassed in their defence as to amount to a denial of justice;

(2) That the plaintiff was not *bonâ fide* in bringing the action; and

(3) That no injustice will result to the plaintiff if he proceeds in the Courts within the jurisdiction of which the cause of action arose.

This is a discretion to be exercised by the Court. A certain amount of law has been quoted and several cases cited to show us how the discretion was exercised by other Courts, but I think that the nearest case in point is that of *Logan* v. *Bank of Scotland* (1 K.B.D., 1906, p. 141).

There, the case was a purely Scottish case. Here, it is a purely Turkish one, and all the transactions which give rise to the alleged cause of action took place exclusively in Turkey; and all the parties to the action reside in Turkey. Unlike the case of *Logan* v. *Bank of Scotland*, there is no other defendant resident in Cyprus besides the Bank which might necessitate the action being brought here.

Quoting from the above case, and altering the facts to suit the present case, one would say: Plaintiff is an ex-employee of the Bank resident in Turkey; the Bank is practically the State Bank of Turkey, and they have their head office in Turkey, with branches all over Turkey, and branches in Cyprus with a Regional Manager in Nicosia. The writ of summons in this action was served on the Bank

BELCHER, C.J., DICKINSON, J., FUAD, J.

RENE DE SUMERER v. THE OTTOMAN BANK.

here, but the Cyprus Branch of the Bank appears to have taken no part and was not concerned in any of the matters in question in this action.

It is clear from the affidavits in this case, as in the case of *Logan* v. *Bank of Scotland*, that all the circumstances on which the plaintiff relies took place in Turkey and not elsewhere. And if this action is to be fought out it will probably involve the calling of a number of witness and certainly the production of numerous books, documents, and papers relating to the matters in question from Turkey and the consideration of Turkish law which has to be proved here as a question of fact by experts (no law passed in Turkey after 1878 is applicable here) as affecting the rights and liabilities of the respective parties and it is perfectly clear that a case of this kind ought if possible to be tried in Turkey.

In this case it seems to us that all the grounds for granting the application set out in the judgment of the Court of Appeal in *Logan* v. *Bank of Scotland* are present. It may seem at first glance that the subject matter of *Logan* v. *Bank of Scotland* was more complicated than that in the present case, but we shall examine the pleadings to see what is necessary for the Bank to prove, and what evidence they may find it necessary to call before the Courts of Cyprus in making their defence.

It is true that the plaintiff has offered to admit all documents in the possession of the Bank without these being formally proved by oral evidence, but there still remain other statements relied upon by the Bank for their defence which the plaintiff denies and which consequently the Bank must adduce evidence to prove.

This evidence, however, is the least part of their difficulties, for the witness to prove those statements are members of the Bank's staff.

The serious burden arises in interpreting the contract between the parties. In order to see what evidence may be required to assist the Court in interpreting the contract, we must examine the facts relating thereto that are before us. It is a contract entered into between a Constantinopolitan and the State Bank of Turkey, the Ottoman Bank. The contract was apparently to be performed in Turkey, and indeed the plaintiff by continuing to reside in Turkey and by expressing his intention to do so in the future has elected, even supposing there were originally any such power of varying the place of performance, to have it performed for his benefit in Turkey, and, what is

more, the parties do not seem to dispute that the law applicable to this case is Turkish law, *i.e.*, the law of the country where the contract was made.

In order to establish what the Turkish law is, and what are the legal principles applied by the Turkish Courts in interpreting contracts like the one in question, it will be necessary to call experts from Constantinople to Cyprus, and this would be certainly a most expensive, difficult and hazardous undertaking.

As to the question of whether the plaintiff is *bonâ fide* in bringing his action in the Cyprus Courts: taking the language of the President of the Court in the judgment in *Logan* v. *The Bank of Scotland*, p. 152, if a plaintiff brings an action for breach of contract against a branch bank outside the country in which the contract was entered into, was to be performed, was in fact performed, and where the alleged breach has taken place, " Could there be any reasonable doubt but that the plaintiff must be treated as intending to bring a vexatious action and that such action must be stayed ? " We do not say that plaintiff in the present case is trying anything in the nature of blackmail, as seems to have been considered in the case of *Logan* v. *Bank of Scotland*, but we do think that he thought that as certain cases had gone against the Bank (*vide* para. 14 of his affidavit of 7.3.28) he would be in a better position to effect a settlement more satisfactory to himself than if he went before the Turkish Courts.

We think he misconceived this action altogether, not realising that there were many points at variance between his position and that of Baldassare, and if he had so realised these variances he would not have instituted the action. Baldassare is a Cypriot and entered into a similar contract with the Cyprus Branch of the Ottoman Bank, he worked in Cyprus nearly all his life, and even when working in Constantinople during the last three or four years of his Bank career he always declared his intention of living in Cyprus, and on the occasion of his vacations always returned to Cyprus. Baldassare was put on pension in Cyprus, and living in Cyprus it was necessary for him to be paid in the currency of Cyprus, which is sterling.

As by the Treaty of Lausanne the Turkish Republic undertook to create modern Courts of Justice capable to deal with the disputes of foreigners; and friendly relations exist between Great Britain and Turkey; and further as it is stated in the Annual Practice of 1928 at p. 684, the appropriate method for commission to examine witnesses in Turkey is the issue through the Foreign Office of letters

BELCHER, C.J., DICKINSON, J., FUAD, J.

RENE DE SUMERER v. THE OTTOMAN BANK.

of request, we are bound to assume that there are competent Courts in Turkey accessible to the plaintiff. In our opinion, it would be contrary to public policy to assume otherwise and to require proof of it by evidence in Court.

For these reasons I think the appeal should be allowed and the application granted staying proceedings in this action, with costs here and in the Court below.

Judgment. THE CHIEF JUSTICE: As I find myself unable to concur in the view of the majority of the Bench, it is desirable that I should give a separate judgment. The order appealed from was made by a Divisional Court consisting of Lucie-Smith and Sertsios, JJ., on an application by the defendant Bank (appellant) to stay the action of the plaintiff (respondent) on the grounds that it is frivolous and vexatious and an abuse of the process of the Court. Jurisdiction to hear the action was admitted on behalf of the appellant.

What we have to decide is whether the Court below were right in their view that a case had not been made out by the Bank for staying the action. They do not go into reasons, and that makes it necessary to examine the materials they had before them. First, the pleadings show that this is an action by a retired employee of the Bank for his pension. That he is entitled to something is not denied; it is the amount which is disputed.

The pleadings might be clearer than they are, but from paragraph 8 of the statement of claim, paragraph 7 of the defence and paragraph 2 of the reply the case appears to turn entirely on the interpretation of a written contract which is admitted to be governed by Turkish law.

From the affidavits filed it appears that respondent is an Italian subject resident in Constantinople, and that all his service with the Bank was in Turkey, none of it in Cyprus. The appellant Bank has its head office in Turkey and branches in Cyprus. The cause of action, therefore, arose out of the jurisdiction, and it may be accepted that in the circumstances greater inconvenience would be caused to the Bank by having to defend the case in Cyprus than if it were heard by the Turkish Courts in Constantinople. The extent of the inconvenience and also of the expense would depend upon whether the Bank found it necessary to call evidence. The respondent, it seems, proposes to call no evidence other than his own and is willing to admit all relevant documents in the Bank's possession and to agree upon the text of Turkish law; but clearly there may be Turkish decisions which would need to be placed before the Cyprus Courts by a person learned

in the Turkish law; such a person might be available in Cyprus, where there is much Turkish law still in force and advocates whose native tongue is Turkish and who have qualified in Turkey; or, on the other hand, the Bank might wish to call a lawyer from Constantinople.

There have been several actions in the Cyprus Courts by ex-employees of the Bank in which contracts between the Bank and its servant have come up for interpretation; the files of some of these are in evidence in this case. And while this is the first of such actions having no sort of local connection with Cyprus, it is possible that the fact of these other cases having been heard and decided is what made the respondent wish to have his own case taken here rather than in Turkey.

I expressed the opinion during the hearing of the appeal with regard to paragraph 5 of the affidavit of Mr. Jones filed for the Bank, that a mere statement, without disclosure of means of knowledge, that a fair trial could be had in Turkey, was not sufficient for the Courts of Cyprus to come to any conclusion upon; but on consideration I think I was wrong and that as Great Britain is in political relations with Turkey we must assume that Turkey has the ordinary appanages of civilisation in that regard.

The course of the appellants' argument both in the Divisional Court and before us was that if the applicant satisfies the Court that he will be embarrassed if the action goes on here, while on the other hand no injustice will be done to the plaintiff if he proceeds in the other country, the Court ought to stay proceedings here.

The respondent's argument was that mere expense or inconvenience is immaterial; and that the only question must be whether the object of proceeding in Cyprus rather than in Turkey is to gain an undue advantage over the defendants.

Both sides relied on *Logan* v. *The Bank of Scotland*, 1906, 1 K.B. 141. There was there thus much similarity, that it was only the existence of a branch of the Bank in London which gave jurisdiction, while all the matters in question related to Scotland.

But in that case it was clear that a large number of Scottish witnesses would have to be brought to England, and also many documents would probably have to be kept a long time in London; while in the case now before us it is at least probable that very few (if any) witnesses will have to be called and that the case will turn on matters of interpretation rather than of evidence; which have already, and quite recently, been before our Courts.

BELCHER, C.J., DICKINSON, J., FUAD, J.

RENE DE SUMERER v. THE OTTOMAN BANK.

The conclusion to which the President of the Court of Appeal come on the particular facts in the Bank of Scotland case was that the plaintiff's action was not brought *bonâ fide*, and he seems to have adopted the Bank's view that plaintiff's object was to harass under cover of asking for justice, so as to force a settlement.

It has also been formally alleged in the present case by the Ottoman Bank that the plaintiff's action is not *bonâ fide;* but no proof of that was given and I think the Divisional Court might rightly have concluded, as we take it that it did conclude, that the Bank had failed to establish anything more than that, in a case where defendant admitted plaintiff was entitled to something, plaintiff, a foreigner, preferred to have the governing document interpreted by the Court of a British Colony familiar with similar cases against the same defendant, rather than by a foreign tribunal.

In my view that plain and direct object is something very different from the object of making things so inconvenient for the Bank that the alternative to settling a problematical claim would be such heavy embarrassment and expense as to place it in an unjust dilemma; there is a probable, but not certain, greater expense to the Bank if it has to defend this case in Cyprus as it has defended many others; but no certainty of embarrassment and no *mala fides* on the plaintiff's part or any intention ulterior to that of getting his case tried by a tribunal which he certainly prefers but as to which there is no suggestion that it will not do equal justice to the Bank. Finally, the Bank has moneys of the plaintiff's in its hands and has not to fear that it may lose its costs.

I think we should, in such circumstances, extend the hospitality of Cyprus Courts to those who seek redress here; that is where it is honestly sought and there is no question of its being used as a weapon of vexation or oppression. The Divisional Court were in my opinion right, and the present appeal should be dismissed.

Appeal allowed.