1933.
Dec. 21 & 22.

OTTOMAN BANK
v.
DASCALOPOULOS
(No. 3).

[STRONGE, C.J., THOMAS AND SERTSIOS, JJ.]

OTTOMAN BANK
v.
ANGELOS DASCALOPOULOS (No. 3).

(*Civil Appeal No.* 3435.)

Contract of Service—Bank Employee—Pension—Currency—Judgment for debt due in foreign currency.

The respondent entered the pensionable service of the appellant Bank in 1905 and was serving in Constantinople in 1923 when he was transferred to Cyprus. Throughout the whole period of his service his salary was in Turkish pounds. Up to the year 1915 the only pounds in circulation in Turkey were gold pounds, 110 of which were equal in value to 100 English sovereigns. In April, 1915, paper pounds were introduced in Turkey and from this date until May, 1921, salaries of appellant's employees were paid upon a gold basis; *i.e.*, they received as many paper pounds as would at the current rate of exchange buy the gold pounds of their fixed salary. From May, 1921, employees in Turkey received less than the gold value of their salary owing to appellant Bank arbitrarily fixing the value of gold pound at much less than its exchange value. Upon transfer to Cyprus respondent's salary in Turkish pounds was converted at the ratio of 110 to 100 into Cyprus paper pounds which were then equivalent to English sovereigns. Respondent was retired as from 1st January, 1932, and appellant informed him his monthly pension would be "Pounds Turkish 28.80 at 110; Pounds sterling £26.3.8." At this date the Cyprus pound had following sterling gone off its gold basis. Respondent claimed that the 28.80 Turkish pounds were gold pounds, and that he was therefore entitled to a monthly pension of the equivalent of this amount in Cyprus currency.

Held, that respondent was entitled to a monthly pension in Turkish gold pounds payable in Cyprus currency according to the rate of exchange prevailing at the date when each instalment of pension becomes due.

Action tried in the Divisional Court before Crean, Ag. C.J. Plaintiff claimed a declaration that he was entitled to a monthly pension of 34.56 Turkish pounds gold converted into Cyprus currency at the rate of exchange of the day of payment of each monthly instalment, and alternatively damages. Plaintiff alleged that he was entitled to a pension of 64% of his salary, which he said was 54 Turkish gold pounds, made up of 45 Ltq. salary, Ltq. 5 value of free quarters, and £4 as being two increases by way of indemnity. The defendant Bank denied that the two monthly increases by way of indemnity and the value of the quarters formed part of plaintiff's pensionable salary. They admitted liability to pay plaintiff a pension of 28.80 Turkish pounds which they alleged were equivalent to £26.3.8 in Cyprus paper currency. Crean, Ag. C.J., found that "the basis of payment of salaries and pensions is gold; which must mean

that these salaries and pensions are payable in gold or its equivalent value in the currency of the country in which the employee has been working when retired," and gave a declaration that plaintiff was entitled to a monthly pension equal to 28.80 Turkish pounds gold, payable in Cyprus currency according to the rate of exchange prevailing on the date when the pension became due. The appellant Bank appealed to the Supreme Court.

Clerides for the appellant.

Triantafyllides for the respondent.

JUDGMENT :—

STRONGE, C.J.: The plaintiff in this action entered the employment of the defendant Bank in 1903 and became a member of its permanent staff in 1905. He subscribed (see Exh. A.D. I and H.L.J. II) to the Regulations of the Pension and Superannuation Fund (hereinafter referred to as the Pension Regulations).

In 1923 he was transferred from Constantinople (where he was then serving temporarily) to Cyprus. In 1926 he was informed in a letter from the defendant Bank dated 25th May, 1926, that he was to receive "une augmentation de traitements sous forme d'indemnité" of L. Tqs. 2 monthly, and by letter of 23rd January, 1929, he was informed of a further "augmentation sous forme d'indemnité" of L.T. 2 per month.

By a letter from the defendant Bank dated 19th September, 1931, he was informed he would be put on pension as from the 1st January, 1932, and a further letter from the defendant Bank dated 29th September, 1931, informed him that his pension would be payable on the basis "L. Tqs. 28.80 at 110: L. sterling £26.3.8." To the calculation on this basis the plaintiff by his letter dated 5th October, 1931, (Exh. A.D. VIII) took exception, pointing out that his pension should be calculated not only on L. Tqs. Gold 45 (as his basic salary), but also on the two increases of L. Tqs. Gold 2—and on the free quarters occupied by him as manager. The reply to this letter was a communication from the Direction Générale of the Bank at Constantinople dated 10th November, 1931, (Exh. A.D. XI) in which he was told that these claims were contrary on all points to the Pension Regulations. It was admitted at the trial that there was nothing in the Regulations on these points. On the 31st December, 1931, he was retired, and on the 3rd February, 1932, the writ in the present action was issued. The issues raised by the pleadings were the three foreshadowed in the Exh. A.D. VIII and A.D. XI just referred to. The learned trial Judge in a considered judgment found that the plaintiff's salary was on a gold basis and that he was,

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consequently, entitled to a monthly pension equivalent to 28.80 Turkish gold pounds to be calculated in Cyprus currency at the rate of exchange prevailing on the date when the pension (which I take to mean each monthly instalment of the pension) becomes due. Against this part of the decision the defendant Bank has brought the present appeal. On the issues whether the two increases of £2 each per month and the free quarters were pensionable the learned Judge decided in favour of the defendant Bank. Against the trial Judge's finding on the first of these two issues the plaintiff has brought a cross-appeal, the contention that he was pensionable in respect of the free quarters being abandoned.

The grounds of the defendant Bank's appeal are :—

(*a*) That the Court erroneously found that the salary of the plaintiff was 45 Turkish gold pounds.

(*b*) That the Court erroneously found that the plaintiff is entitled for his pension to a sum equal to 28.80 Turkish gold pounds per month.

The grounds of the plaintiff's cross-appeal are that the trial Judge erroneously excluded from the pensionable salary the sum of 4 Turkish pounds gold granted to the plaintiff as increase of salary in the form of indemnity ; inasmuch as this amount was entered in the salary book and treated as salary and the fact that no retentions therefrom were made to the Pension Fund did not estop the plaintiff from claiming pension thereon.

I shall deal first with the grounds of appeal of the defendant Bank. The question whether the salaries of employees in Turkey were on a gold basis and whether on retiring they have a right to be paid their pensions on that basis has been already litigated in a number of cases in the Cyprus Courts. In two, at least, of these cases—*Baldasarre's* and *Esmerian's*— this question was directly in issue. In *Chakarian Case* where the issue was one of wrongful dismissal it was only involved in the calculation of the damages awarded to the plaintiff. Articles 9, 13, 14 and 15 of the Pension Regulations deal with the employees' pensions and their provisions may, for the sake of brevity, be summarized as follows :—Employees contribute to a Pension and Superannuation Fund 5 per cent. (formerly 4) of their salary plus half for one year of any increment received. To this Fund the Bank also contributes 10 per cent. (formerly 6) on the salaries of its staff. In respect of his first 10 years' service an employee receives a pension of 30 per cent. of his annual fixed salary with an additional 2 per cent. for each succeeding year of service. The salary to be taken as the basis of this calculation is the salary he received on the 31st December of the year preceding that in which he is retired.

It is conceded that the plaintiff upon retiring on the 31st December, 1931, became entitled as pension to 64 per cent. of the salary received by him on the 31st December, 1930. At the trial in addition to the oral and documentary evidence adduced counsel for both parties by agreement made use of the printed record of the Privy Council Appeal in *Chakarian Case*, and the record in *Esmerian Case*; these records were also referred to in the arguments before us and must, consequently, be regarded as forming part of this case.

The trial Judge points out in his judgment that there was no express agreement—oral or written—specifying the currency in which the salary or pension was to be payable, and that the Pension Regulations are silent on the question. The learned Judge states that in the absence of such evidence he rests his finding that the salary basis was gold on the evidence of the plaintiff and his witness, Ohanes Chakarian, and on that of Mr. Jones, the Regional Manager of the Cyprus branches of the defendant Bank, who was the only witness called for the defence. The veracity of none of these witnesses was called in question by counsel and the trial Judge did not make any criticism upon it. The functions of an appellate Court in such a case are pointed out in the following passage from the judgment of Halsbury, L.C., in *Montgomerie and Co.* v. *Wallace James* (1): "But where no question arises as to truthfulness and where the question is as to the proper inference to be drawn from the truthful evidence, then the original tribunal is in no better position to decide than the Judges of an appellate Court." This statement was approved by Cave, L.C., in *Mersey Docks and Harbour Board* v. *Procter* (2). The question for this Court is, consequently, what is the true inference to be drawn from the evidence and the conduct of the parties as to the basis on which the salary was payable and I think the most convenient way of dealing with that question is to take the periods of the plaintiff's service in Turkey and Cyprus separately. I proceed, accordingly, to deal with his service in Turkey from 1903 to 1923.

It is not disputed that in Turkey prior to the War the employees' salaries were paid in Turkish gold pounds (Evidence of Mr. Reid, p. 16, *Chakarian Record*) these being then the only pounds existing in that country. The scarcity or hoarding of gold, apparently led to the passing of the Turkish law of 12th April, 1915, which authorized the issue of currency notes as lawful tender at their face value and provided for their redemption in gold 6 months after the conclusion of peace in Constantinople: an event which so far as the British Empire is concerned occurred on 6th August,

(1) (1904) A.C. 73 at p. 75.
(2) (1923) A.C. at p. 258.

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1924. In 1916, the Bank, according to the evidence of Mr. Reid, its Joint General Manager in Constantinople, began to pay its employees' salaries in these currency notes. In that year the cost of food and other necessaries of life had risen considerably and was still continuing to rise. This rise was not wholly due to depreciation in the newly-issued paper currency, but would have had to a considerable extent to be faced by the Bank's employees even if there had been no issue of currency notes. The Bank in response to appeals from its employees on the ground of this increase in the cost of living came to their assistance, and the method at first adopted to alleviate the situation was the grant from time to time of advances of continuously increasing percentages of their salaries. Side by side, however, with the increase in cost of living there was also taking place an ever-increasing depreciation in the Turkish paper pound, so that eventually the employees notwithstanding these percentage advances to meet the cost of living found themselves in very straitened circumstances. They applied to the Bank to be paid in gold—as in the years prior to 1916—or in its equivalent in paper money at the current rate of exchange. The decision of the Management Committee does not seem quite to fit in with the contention now advanced by the defendant Bank that the applicants had no right to be paid in gold. They refused the application for payment in gold, not on the ground that the staff had no such right, but on the ground that "in the present circumstances the Bank must scrupulously preserve its stock of gold." Not "you have no right to gold" but "we haven't gold available."

The system of making advances of continuously increasing percentages of salaries was continued down to January, 1920, when it was replaced by a decision of the General Management to convert the monthly salaries of employees in Turkey into sterling at the rate of 110 Turkish pounds for 100 pounds sterling and pay each employee his salary in Turkish currency notes at the average selling rate of the pound sterling as registered at the Head Office during the immediately preceding three months. (Decision of 27th January, 1920). Under this system—according to the evidence of the plaintiff corroborated by that of Ohanes Chakarian the number of Turkish paper pounds which employees were to receive was arrived at by converting the Turkish gold pounds of salary into English sterling in the ratio of 110 to 100—this, according to the evidence of the plaintiff and Ohanes Chakarian, being the actual ratio of the weight of the Turkish gold pound to that of the English sovereign (7.216 and 7.988 grammes respectively). The equivalent value in English sterling having been thus ascertained was then converted into Turkish paper pounds at the current rate

of exchange. This method of arriving at the equivalent in Turkish paper money of the employee's salary after it had been converted into sterling was followed for nearly a year and a half. It was superseded by a decision in May, 1921, of the Management Committee arbitrarily fixing 451 piastres as the number to be taken as the equivalent of the pound sterling, and to the result in Turkish paper pounds 10 per cent. was to be added for salaries not exceeding L.Tqs. 55.

In 1923, after the plaintiff had gone to Cyprus, the Bank adopted a method of directly converting the Turkish pound into paper by treating it as equivalent to 410 piastres.

Down, then, to the decision of May, 1921, by which the Bank proceeded to fix the number of piastres which it would regard as the equivalent of the pound sterling, it seems evident that salaries were being paid on a gold basis, being first converted into sterling at the rate of the Turkish gold pound to the English sovereign and the resulting sterling being in turn converted into Turkish paper money at the selling rate of the pound sterling. The amount of Turkish paper money thus yielded was the salary received by the employee. Had Turkish gold pounds been procurable any employee desiring to do so could, by reversing the process of conversion have procured Turkish gold pounds equal in number to the Bank's original figures of his month's salary. (Evidence of Ohanes Chakarian, p. 21). It was argued that the so-called " basic " Turkish pound means the paper Turkish pound, and that this conversion process was employed in order to convert paper Turkish pounds into paper Turkish pounds. To me this seems much as if one was to speak of converting half crowns into half crowns or sovereigns into sovereigns. I do not comprehend how conversion can be said to have taken place unless the money converted has been turned into money which is either of a different denomination or of a different kind. From May, 1921, however, when the Bank began to fix the number of piastres which it would regard as the equivalent of the pound sterling or (later on) as the direct equivalent of the Turkish pound, the will of the Bank became, as it were, the basis of payment, because instead of the number of piastres being determined by the actual selling price of sterling as theretofore, it now rested wholly with the Bank to say how many or few it would give. It was argued that the result of this arbitrary fixing of the number of piastres being that the salary in paper pounds received by the plaintiff was no longer the equivalent of 45 Turkish gold pounds, his acceptance of such salary is conclusive evidence against the contention that he was paid on a gold basis and amounts to such an acquiescence on his part as estops him from

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maintaining this action. In considering such an argument regard must, I think, be had to all the circumstances of the case. The plaintiff was at the time in Turkey, in the employment of the defendant Bank, which after paying salaries for a number of years in gold or on a gold basis, arbitrarily decided to pay them on a basis to be determined by its own volition. The employees, thereupon, according to the evidence of Ohanes Chakarian, sent in a protest. More, I think, could not reasonably have been expected of them. The taking of proceedings in the Turkish Courts to test their rights against what is admittedly the State Bank (statement by counsel for defendant: p. 31, *Esmerian Record*) would, on the face of it, appear to hold out a very slender chance of success. Having regard to these circumstances I do not think it can be said that the plaintiff during the years 1922–23 acquiesced in payment of his salary on this basis. His position, as I view it, was one of involuntary quiescence rather than acquiescence, and cannot, consequently, be held to amount to an estoppel. From May, 1921, down to April or May, 1923, the date when plaintiff left Constantinople for Cyprus, this decision of the Management Committee with its artificial figure of 4.51 as the equivalent in Turkish paper pounds of the English pound sterling fixed the basis of his salary—the actual figure, the plaintiff states, was 7.85. The plaintiff's salary, according to his evidence, was arrived at as follws :— $\frac{45\times100}{110}\times4.51=18{,}450$ Turkish piastres or 184.50 Turkish paper pounds to which was added 10 per cent. giving a total of 202.95 paper pounds (equal to £27 sterling) instead of 353.24 paper pounds. The plaintiff further stated that had his monthly salary at that time been 45 Turkish paper pounds it would only have been equal to about £6 sterling.

Ohanes Chakarian, who was an employee of the defendant Bank from 1912 to 1931, gave evidence that when he was working in Smyrna in 1921 to 22 the basis of the salaries of the Bank's employees was the Turkish gold pound. He also corroborated the evidence of the plaintiff as to the Turkish gold pound being converted into English sterling at the rate of 110 to 100 and the resulting sterling being then converted into Turkish paper notes at the actual rate of exchange of sterling. Mr. Jones in his evidence stated he "knows nothing about the methods of running the Bank in Turkey as to value and payments of salaries to officials in Turkey since 1915." His evidence, therefore, is of no assistance to us in considering what was the basis of the plaintiff's salary during that portion of his service in Turkey when the Bank was no longer paying salaries in gold. On the foregoing evidence I have come to the

conclusion that down to May, 1921, the plaintiff's salary was on a gold basis and that from that time on to the time he left for Cyprus he had a legal right to a salary on that basis—a right which was violated by the Bank arbitrarily fixing the number of piastres it would regard as equivalent to the pound sterling, instead of taking the rate of exchange as had been done theretofore. I am also of opinion for the reasons I have stated that the plaintiff cannot be said to have acquiesced in the payment of his salary on this basis. I come next to the basis of payment of salary during the period (1923 to 1931) of the plaintiff's service in Cyprus. Objection was taken by Mr. Clerides to the admission at the trial of evidence by the plaintiff of a statement or promise alleged to have been made to him prior to his departure for Cyprus by Mr. Scanziani (then Director of Personnel at Constantinople of the defendant Bank) that in Cyprus plaintiff's salary would be as formerly and that he would draw his salary in parity. The ground of objection was that no allegation of any such promise had been pleaded in the Statement of Claim. Whether this objection is or is not well founded is, I think, a matter which it is unnecessary to discuss as there was other evidence to the same effect before the Court. In the *Chakarian Case*, for instance, Mr. Reid stated on cross-examination: "If a clerk were employed in Constantinople at a salary of £30 and were transferred to Cyprus he would be paid £27.10.0 calculated on the basis of pounds Turkish 110 to 100 sterling. Upon transfer to a place outside Turkey no fresh agreement would be made as to the salary payable. Any clerk employed in Cyprus would have his pension here in sterling at the rate of Turkish pounds 110 to 100 sterling." (*Chakarian Record*, p. 18.)

The plaintiff's evidence as to the period of his service in Cyprus was that he received his first salary in Cyprus at the end of May, 1923, in Cyprus currency notes amounting to £40.18.1 converted from Turkish gold at the rate of 110 to 100—the ratio of Turkish and English gold pounds—and that the Cyprus £1 note was at that time worth a gold sovereign. That during his 26½ years service in the Bank in Palestine, Turkey and Cyprus he had always in the books of account had to express the ratio of Turkish gold to English gold as 110 to 100. Ohanes Chakarian stated that sometime after he came to Cyprus in 1923 he had control of the books of the Bank and that in the Cash Book English sovereigns and Cyprus paper currency were counted at the same rate. That the relation of the gold Turkish pound and the English pound appeared in the Bank's books as 110 to 100 and this relation was a real one.

Mr. Jones in giving evidence said: "In Cyprus we pay at the rate of 110 to 100 which is a conventional rate. The employees were paid in Cyprus on this conventional rate.

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The salaries of employees in Cyprus are not to my knowledge in gold." Under cross-examination he stated: "In the contract of plaintiff the pound referred to may have been the gold pound or paper pound . . . The basis of payment of pensions and salaries is gold but I say the fixed ratio is 110 to 100 and this is a conventional ratio . . . The 110 to 100 is the parity between the Turkish gold pound and the English sovereign."

I may say in regard to the first quoted answer in cross-examination of this witness that as the contract of the plaintiff, consisting of the Pension Regulations to which he had signed his assent, came into force in January, 1899, and as at that time there existed in Turkey no other pound than the gold pound, the pound referred to in the contract is undoubtedly the gold pound.

I turn to the Salary Book of the Larnaca branch which covers the period January, 1928, to July, 1931, and in which month by month the salaries of the Larnaca staff are entered opposite the names of the individual members. The page appropriated to each month is divided into vertical columns. First comes a column headed: "Traitements en L.Turqs." Next to it and immediately to its right is another column headed: "Indemnités." Then come two others showing the employees' and the Bank's respective contributions to the Pension Fund. Then there is a column headed—like the first: "Traitements en L.Turq." and finally we have a column headed: "Contrevaleur" followed either by the words "en £ sterling" or "en £" or "£ *s. cp.*". In the first mentioned column under the heading "Traitements en L. Turqs" there appear each month the figures 45, denoting the plaintiff's salary. In view of the uncontradicted evidence that at the date of his departure for Cyprus the plaintiff was actually receiving 212.95 (it should read 202.95) Turkish paper pounds as monthly salary it cannot, I think, be successfully maintained that these 45 L.Tqs. appearing as his salary are Turkish paper pounds. If not Turkish paper pounds, they must be Turkish gold pounds, as no other kind of Turkish pound exists. After the deduction of L.Tqs. 2.25 as plaintiff's contribution to the Pension Fund and the addition of his L.Tq.4 for indemnities the net salary due to him appears in the last column but one (headed "Traitements en L.Tqs.") as 46.75 and its equivalent—the sum actually paid to and received by the plaintiff is shown in the "contrevaleur" column as £42.10.0, that is to say the L.Turq 46.75 have been converted into Cyprus currency at the rate of 110 to 100—the rate, as we have seen, of the Turkish gold pound to the gold sovereign. In view of the answer of Mr. Clerides to the Court that there is no other Turkish coin than the Turkish gold pound the

ratio of which to the English sovereign is 110 to 100 the natural inference, as it appears to me, is that wherever you make use of that ratio to convert Turkish pounds and your result is English gold or its equivalent the Turkish pounds so converted are not paper pounds but gold pounds. The L.Tqs. 46.75, shown in the Salary Book represent, consequently, Turkish gold pounds. Mr. Jones in his evidence said that the ratio of 110 to 100 was a conventional one, meaning, as I understand it, one that is a matter of general agreement or custom (of which an example is given in *Scott* v. *Bevan*—the Jamaica case (1) as distinct from a "real" ratio which is one depending upon the relative weights of the coins. But whether real or conventional it was undoubtedly *the* ratio employed when Turkish gold pounds were being converted into English gold sovereigns, and where—as in the Salary Book entries in this case—the result of a conversion from Turkish pounds is given as English sterling or its equivalent and such conversion has been effected by employing that ratio the reasonable inference, as I have said, is that the Turkish pound so converted was the Turkish gold pound and not the Turkish paper pound.

Mr. Clerides argued that as sterling was off the gold standard during the years 1923 to 1925 and the plaintiff was being paid in Cyprus currency throughout that period his salary was not on a gold basis. In support of this contention Mr. Clerides referred us to the following Cyprus proclamations: two of September and December, 1914, two of June and September, 1915, and one of September, 1917. Both of the 1914 proclamations and that of September, 1915, state that the currency notes issued under them are to be "redeemed at face value." The 1917 proclamation states that the notes issued under it "shall be redeemed," omitting the words "at face value." Mr. Clerides argued that after the 1917 proclamation the Cyprus currency note was no longer equal to gold since the Cyprus Government no longer undertook to redeem the 1917 currency notes at their face value. Mr. Triantafyllides, on the other hand, contended that the fact of sterling during this period being off the gold standard was immaterial because at that time Cyprus currency notes had a separate existence apart from English sterling and remained independent of it down to 1930 when by Article VI of the Imperial Cyprus Currency Notes Order in Council of 1928 they were for the first time made interchangeable with English sterling. The plaintiff's evidence on this point is that "at this time a Cyprus £1 note was worth a gold sovereign." Ohanes Chakarian says: "in the Bank's Cash Book English sovereigns

(1) (1831) 2 B. & Ad. 76; 36 R.R. 482.

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and Cyprus paper money were counted at the same rate", and the plaintiff as we have already seen corroborates him as to this. Although there is no express statement in the 1917 proclamation that the redemption is to be at face value, the words "shall be redeemed" nevertheless imply, I think, that such was to be the case. To give these words the meaning contended for by Mr. Clerides would necessarily mean that it would have been open to the Cyprus Government to satisfy its obligation to redeem by fixing the lowest current copper coin as the price of each £1 currency note. An assurance of redemption on such terms as those would be worthless and I doubt if the word redemption in the ordinary acceptation of the term can be properly applied to such a transaction. In the view I take of the matter such a meaning of the words "shall be redeemed" in the proclamation was never contemplated and they were intended to be used in the sense of redemption at face value. Apart, however, from these words in the proclamation there is the uncontradicted oral evidence that the £1 Cyprus currency note was at the time the equivalent in value of the English sovereign.

(After discussing the views expressed by the Court of Appeal in *In re Société Intercommunale Belge* (1) which were overruled by the House of Lords, the judgment proceeds):

It may be said that as in that case the parties made use of an expression in the bond which was of uncertain meaning, so in this case, the parties have in the Pension Regulations which constitute the contract between them made use of the expression "L.Tqs." in regard to salary or pension (*e.g.*, in Article 16), an expression which is of uncertain meaning and capable of being interpreted as signifying either Turkish gold pound or Turkish paper pound. To this I think the answer is that there is no such ambiguity in meaning inasmuch as the expression "Ltq." must be taken to bear that meaning in which it was understood by the parties at the time they entered into the contract and at that date the expression could only have been understood by them to mean the Turkish gold pound, because neither then nor for over eleven years afterwards was there any other kind of Turkish pound in existence. Somewhat similar observations, in my opinion, apply to the more recent case of the *Broken Hill Proprietary Co.* v. *Latham* (2) reported since the present case was at hearing. The case of *Assicurazioni Generali* v. *Selim Cotran* (3) turned on the nationality of the defendant compnay at the date of the

(1) 49 T.L.R. 344.
(2) (1933) 49 T.L.R. 137.
(3) (1932) A.C. 268.

Lausanne Treaty which contained specific provisions as to the currency in which payment should be made. It is therefore of no assistance in the present case.

I have read and carefully considered *Chakarian's case* from its inception to the final appeal before the Privy Council. For the reasons which I am now about to state I am of opinion that as far as the calculation of the pension in that case is concerned the decision does not govern the present case. The main question in dispute in that case was one of wrongful dismissal. The basis on which the plaintiff's pension should be calculated was a subsidiary question, material only in regard to the computation of the amount of damages to which the plaintiff was entitled. The plaintiff's monthly salary was 25 Turkish pounds, to 50 per cent. of which, *i.e.*, 12.5 Turkish pounds, he was admittedly entitled as pension. The trial Judge took the view that the salary was on a gold basis and that the plaintiff was entitled to his pension on that basis. He consequently treated the 12.5 Turkish pounds as being Turkish gold pounds and using the ratio of the Turkish gold pound to the English sovereign (110 to 100) converted them into their English equivalent £11.7.2 which he held to be the amount to which plaintiff was entitled as pension. On appeal, the Chief Justice, taking October, 1922—the date of dismissal—as the material time, proceeded to calculate the plaintiff's pension in Turkish paper pounds, and for this purpose accepted—apparently without question—as his basis of calculation the decision of the Management Committee of 18th May, 1921, fixing 451 piastres as the equivalent of the pound sterling. Mr. Reid in his evidence had stated it was not in fact the equivalent, and from the evidence of plaintiff in the present case it appears that the equivalent was 785 piastres.

Two preliminary questions, as it appears to me, ought to have been considered before adopting this decision of the Management Committee as a basis of calculation: (*a*) Was the rate of 451 in the decision the *de facto* equivalent in paper piastres of the English pound sterling? (*b*) If not, was the Bank within its legal rights in substituting for a process by which the employee's salary in Turkish pounds was converted into English sterling at the rate of 110 to 100 and he was paid the equivalent selling price of that sterling in paper piastres, a process in which the number of paper piastres was no longer determined by the selling price of sterling but by the *ipse dixit* of the Bank. The question as it appears to me was not "whether" as the learned Chief Justice puts it "the respondent would have received any higher pension if he had resigned and stayed on in Turkey" (I have little doubt he would not) but rather whether he had a legal right to continue to have his salary

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paid on the basis theretofore subsisting instead of on a basis arbitrarily fixed by and variable at the will of the Bank. If he had that right—as in my opinion he had—then the learned Chief Justice—his attention not having been directed to the question—would seem to have erred in adopting the artificial rate of 451 piastres fixed by the Management Committee instead of 785 the actual rate. By so doing he arrived at his figure of Chakarian's total salary as 112.75 Turkish paper pounds and his pension as 56.375 Turkish paper pounds. I find myself somewhat perplexed by that passage of the learned Chief Justice's judgment where he is reported to have said that the Court below arrived at the pension of £11.7.2 by substituting the *present rate* of Turkish *piastres* to sterling. The £11.7.2, as already pointed out, was arrived at by the Court below by taking the admitted pension of 12.5 Turkish pounds as Turkish gold pounds and converting them into English money by using the ratio of 110 to 100 which is the unvarying ratio of Turkish gold to the English sovereign. The term "present rate," if the Chief Justice intended it to refer to this unchanging ratio of 110 to 100, does not seem a very suitable one, and it certainly was not the "rate of piastres to sterling."

At the hearing of Chakarian's appeal before the Privy Council their lordships on the question of damages expressed (1930, A.C. p. 284) their agreement with the majority of the Judges of the Court of Appeal as to the measure of damages and the basis on which—for that purpose—the respondent's pension was to be calculated, but they were of opinion—having in mind, apparently, Article 14 of the Pension Regulations—that it must be calculated on the salary which the respondent actually received on the 31st December, 1921—the year 1922 in the report is obviously a misprint. It was agreed that on this basis the pension worked out at 56.375 Turkish paper pounds as arrived at by the Chief Justice, and their lordships, consequently, accepted this figure holding, however, that for the purpose of a decree in English money the rate of exchange current at the date of dismissal and not the rate current at the date of the decree should be adopted. It does not appear to have been brought to the notice of their lordships that the learned Chief Justice in adopting as the basis of his calculation the decision of the Management Committee of 18th May, 1921, was working upon an artificially fixed rate of 451 paper piastres to the pound sterling instead of the actual rate of 785. Had their lordships' attention been drawn to the fact that this was the case I doubt if they would have adopted the Chief Justice's figure of 56.375 Turkish paper pounds as the correct one. Such are the reasons which lead

me to conclude that so far as the calculation of the pension is concerned the decision of the Privy Council in Chakarian's case is not a decision that the pension was not on a gold basis nor binding on this Court in calculating the pension of the plaintiff in the present action.

The next argument to be considered is that the plaintiff without any protest accepted his salary in Cyprus currency for the months of September, October, November and December, 1931, when sterling was off the gold standard, and that this acquiescence is fatal to his claim either as disproving that his salary was on a gold basis or by way of estoppel.

It is admitted that in September, 1931—the plaintiff in his evidence puts it sometime after the 17th—English sterling went off the gold standard. The Imperial Cyprus Currency Notes Order in Council of 1928 came into force on 16th January, 1930—the date of its publication in Cyprus (1930, *Cyprus Gazette*, p. 23), and it is not, consequently, contended by the respondent that Cyprus currency notes were in 1931 independent of English sterling as is alleged to have been the case in the years 1923 to 1925.

The Pension Regulations make the salary received by the plaintiff on 31st December, 1930, the salary on which his pension is to be computed so that salary received by him after that date whether at a lower or higher rate cannot diminish or increase the amount of basic salary on which such pension is to be reckoned. The plaintiff's acceptance, however, without demur of his salary on a non-gold basis for a considerable period of time might fairly be taken, I think, as showing that he did not think he had the claim to be paid on a gold basis which he now asserts.

As to September, 1931, I think that his acceptance for that month affords no such evidence against him. The salary book is made up several days before the end of the month ; and it was not until after the 17th that sterling went off the gold standard. At the time therefore when the plaintiff received his salary there had been little or no opportunity of realizing that payment in Cyprus currency was not of the same value as hitherto.

In his letter of 5th October, 1931, (Exh. A.D. VIII) the plaintiff says : " my pension must be calculated not on the sum of L.T. gold 45 only, but " etc., although he does not explicitly state in so many words that his salary is 45 Turkish gold pounds the words I have just quoted imply, in my opinion, such an assertion by claiming that his salary in Turkish gold pounds is the basis on which his pension is calculable. In view of this letter, I am of opinion that his subsequent acceptance of his salary in Cyprus currency without further protest neither disproves his claim by

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showing his want of belief in it nor amounts to such acquiescence as would estop him from maintaining this action.

Even if the letter be left wholly out of consideration I doubt whether the plaintiff's acceptance without protest of his salary for the final three months of his 26½ years' service in depreciated Cyprus currency could of itself alone having regard to the previous payments during that lengthy service be regarded as sufficient either to disprove his claim that his salary was on a gold basis or to create an estoppel so as to prevent his succeeding in this action. On the evidence and for the reasons I have stated I have come to the same conclusion as the learned trial Judge in regard to the plaintiff's salary and pension and am of opinion that the basis of payment of his salary was gold and that his pension is payable on that basis. This appeal should therefore in my humble judgment, be dismissed with costs.

The question at what date the rate of exchange is to be taken for the purpose of calculating the equivalent in Cyprus currency of the plaintiff's pension of 28.80 Turkish gold pounds may most conveniently be dealt with at this stage. Mr. Triantafyllides cited numerous cases of which it will be sufficient to instance *Barry* v. *Van Den Hurk* (1); *Lebeaupin* v. *Cripsin* (2); *S. S. "Celia"* v. *Volturno* (3); and *Peyrae* v. *Wilkinson* (4). These cases and the others cited by Mr. Triantafyllides are authorities for stating that where money becomes payable in a foreign currency whether as a debt or in respect of a breach of contract or a tort, a plaintiff bringing his action for recovery thereof in an English Court is entitled to judgment in English money for such a sum as, would, at the rate of exchange current when the debt became payable or the tort or breach of contract was committed, purchase the amount of foreign currency payable. In the present case each monthly instalment of the plaintiff's pension of 28.80 Turkish gold pounds as it becomes payable gives rise to a debt due and payable by the defendant Bank and applying *Peyrae* v. *Wilkinson supra*, I think the plaintiff is entitled to a pension of such sum per month in Cyprus currency as will at the rate of exchange current on the date such pension becomes due form the equivalent of 28.80 Turkish gold pounds.

I turn next to the plaintiff's cross-appeal, viz., that his salary on the 31st December, 1930, should be held to include the two monthly increments of £2 each granted him in

(1) (1920) 2 K.B. 709.
(2) Ibidem, p. 714.
(3) (1921) 2 A.C. 544.
(4) (1924) 2 K.B. 166.

1926 and 1929 respectively. The learned trial Judge in the course of his judgment says that in an action for wrongful dismissal such as *Chakarian Case*, all the emoluments received by the plaintiff whether by way of fixed salary, indemnity or free quarters are included in calculating the amount to which he is entitled as damages for the breach of the agreement, but that in the present case the plaintiff having been retired on pension pursuant to the Pension Regulations the question was what was included under the term " salary " for the purpose of calculating upon the basis of that salary when ascertained the amount of pension to which the plaintiff was entitled under those Regulations.

The distinction to which attention was thus directed by the trial Judge is, I think sound and I therefore proceed to examine whether these increments are to be held to be included under the term " salary." I have already stated in a summarized form the provisions of Articles 9, 14 and 15 of the Pension Regulations which prescribe how the pension is to be calculated and it is unnecessary to repeat them here. The correspondence dealing with these two increases consists of three letters forming Exh. H.L.J. I., A.D. II and A.D. III. The first of these dated 12th May, 1926, is from the Direction Générale of the Ottoman Bank to the Direction of the Ottoman Bank, Nicosia. Had a copy of this letter or a complete translation been transmitted to the respondent the question now before us would never, I think, have been raised in view of the following words appearing therein: " le traitement des interessés reste maintenu a son chiffre actuel." The letters in which the Ottoman Bank, Nicosia, informed the Larnaca Branch and its Chief, the plaintiff, of these two increases form Exh. A.D. II and A.D. III. The first of these makes use of the words " une augmentation de traitement sous forme d'indemnité," while the second uses the words " augmentation sous forme d'indemnité." According to the evidence of Mr. Jones " augmentation " and " augmentation de traitements " are identical in meaning. Neither of these two Exhibits contain the intimation that the salary of the persons affected (*scil.* by the increase) is to remain unaltered at its present figure.

I now come to the oral evidence bearing on the point. Both the evidence of the plaintiff and Mr. Jones shows that in addition to the meaning in which the term " indemnity " is used in Articles 3, 18, 19, 20, 21 and 22 of the Pension Regulations it is ordinarily in use in the Bank's service to denote various other descriptions of payments, such as payment for acting temporarily for another official, payment to meet increased cost of living, payment in respect of climatic conditions, payment of one month's salary to a

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cashier to cover risk of loss, payment of the yearly bonus of one month's salary to each employee at Christmas. All these indemnities, according to the evidence of Mr. Jones, possess in common the feature of not being pensionable, the only item pensionable being fixed salary. The two last mentioned of the foregoing payments are entered in the Salary Book (H.L.J. III) the others are not. (Evidence of Mr. Jones).

In my judgment the finding of the trial Judge that these two increases are not pensionable should be upheld for the following reasons: The use of the words "sous forme d'indemnité" in A.D. II and A.D. III having regard to the plaintiff's knowledge of the kinds of payments to which the term "indemnity" was applied in the routine of the Bank, coupled with the knowledge that no retention towards pension is made in the case of indemnities—a knowledge which considering his position as manager may, I think, fairly be attributed to him seeing that it was possessed by Ohanes Chakarian—ought, in my opinion, to have conveyed to him the impression that the increase in salary in shape of indemnity which he was being granted was something distinct from an increase of salary *simpliciter* (augmentation or augmentation de traitement). His signing, too, for his salary month by month in the Salary Book (H.L.J. III) of the Larnaca branch in which his basic salary of L.Tq. 45 is entered in the column headed "Traitement" and the increase was entered in a separate column headed "Indemnité" is, I think, evidence that he was aware it was being treated as an indemnity and not as basic salary. Furthermore the next two columns showing the contributions in respect of his salary to the Pension Fund must have shown him that it was from the outset being treated as non-pensionable since no deductions were being made from this indemnity towards the Pension Fund. In other words the form of the entries in the Salary Book which he saw and signed every month were, in my opinion, a clear indication to him that this "augmentation de traitement sous forme d'indemnite" was not pensionable salary, and I agree with what was said by the trial Judge that if the plaintiff really believed these increases formed part of his pensionable salary he would have asked why no contributions towards the Pensions Fund were being made in respect of them. The question of the Bank's right to grant such non-pensionable increases was not controverted before us, and I have not seen anything in the Pension Regulations which expressly prohibits them from doing so. I doubt if Article 30 can be construed to imply such a prohibition. I concur with the trial Judge in thinking it desirable that in letters conveying information of similar increases some such term

as " non-pensionable personal allowance " should be made use of instead of the rather unsatisfactory word "indemnity." In my judgment this cross-appeal should be dismissed. From what has been stated in the foregoing judgment it follows that in my opinion the judgment of this Court should be that the appeal and cross-appeal herein stand dismissed and that the defendant (appellant) pay to the respondent the costs of the appeal less such costs, if any, as have been occasioned by the respondent's cross-appeal.

THOMAS, J. : The respondent entered appellant's service in 1903 and in 1905 became a member of the pensionable staff when he signed a document declaring his adherence to the " Caisse de Pensions et de Retraites " which constitutes the contract of service subsisting between the appellant Bank and its employees. After serving in Palestine and Turkey he was transferred to Cyprus in February, 1923, as Manager of the Larnaca branch. By a letter dated 19th September, 1931, respondent was placed upon pension as from 1st January, 1932. It is agreed by both sides that respondent is entitled to a pension of 64% of the salary he was receiving on 31st December, 1930. It is so stated in a letter of the Management informing respondent of the amount of his pension.

Thomas, J.

Respondent (plaintiff in the Court below) claims to be paid his pension in Turkish pounds gold, or so much in local Cyprus currency as will purchase such Turkish gold pounds, on the grounds that :—

(1) the salaries of all employees of the Bank are and always have been fixed at so many Turkish pounds gold, which was the only pound existing in Turkey at the time the Pension Fund was created and the Pension Regulations issued until a law of 1915 introduced paper pounds redeemable in gold six months after peace was declared ;

(2) Throughout his service in Cyprus respondent's salary has invariably been described in the Bank's books and documents as Turkish pounds converted into Cyprus pounds at the rate of 110 to 100 ;

(3) Appellants admit respondent is entitled to a pension of 64% of the salary he was drawing on 31st December, 1930. On this date sterling was on a gold basis, and therefore the English pounds equivalent to " pounds Turkish at 110 " are English pounds gold ;

(4) In Cyprus, Palestine and Turkey throughout respondent's 26½ years' service the ratio of 110 to 100 was always used in all the Bank's books of account to express the rate of Turkish gold pounds to English gold pounds ;

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(5) Appellant's letter (Exh. A.D. 7) informing respondent that he is entitled to a pension of " Ltques 28.80 a 110—Lstg. 26.3.8 " is an admission that the Ltqs. 28.80 are gold pounds ; and

(6) the ratio of 110 Turkish gold pounds to 100 English gold pounds is not a conventional relation, as alleged by the Bank, but a true relation expressing the relative weights of the two gold coins.

Upon the evidence of the plaintiff and his witness, and upon the evidence of Mr. Jones, the Regional Manager of the appellant Bank in Cyprus, who stated that " the basis of payment of pensions and salaries is gold but at the fixed ratio of 110 to 100, which is a conventional ratio," the learned Judge found as a fact that the contract between the parties was that salaries and pensions are payable in gold or its equivalent value in the currency of the country in which the employee has been working when retired.

. . . . . .

In the action the plaintiff also claimed that the value of his free quarters and two increases of salary by way of indemnity should be treated as part of his pensionable salary. The trial Court decided that neither of these claims could be sustained. Respondent made a cross-appeal as to both claims, but, as he has abandoned his claim to treat the value of free quarters as pensionable, it remains to consider the claim in regard to the increments by way of indemnity.

Sums of money given each month to an employee for the work done by him, whether they are described as " salary " or as " salary by way of indemnity ", would, in my view, certainly come within the scope of the term " traitement " in Article 14 of the Regulations, and would thus form part of the salary upon which pension must be calculated. It is true that the last part of the letter from the General Management to their Head Office in Cyprus (Exh. H.L.J. I) was omitted in communicating its contents to respondent. The sentence omitted is : " The salary of the interested persons remains maintained at its present figure." This would have made it quite clear to respondent that that increase of salary by way of indemnity was not pensionable. The respondent stated in evidence that it was his duty as Manager of the Larnaca branch to retain 4% of the fixed salaries of all employees in that branch. With regard to his own increment of £2 a month he says : " I did not deduct on this amount as it was not on me to decide." Since he knew that the deduction of 4% must be made from all pensionable salaries, his failure to make the deduction in his own case clearly shows to my mind that he did not regard this monthly " increase by way of indemnity " as

pensionable salary. Throughout the period he received these increments he treated them in the monthly returns to the Nicosia office up to the date of his retirement as non-pensionable salary in that he made no deductions in respect of them, and for that reason I think he is now estopped from alleging that these increases are pensionable.

Appellant's first contention is that, as there is no express agreement that respondent's salary of Ltq. 45 was gold, the manner in which the salary was paid is conclusive. From 1923 to 1925 sterling was off the gold standard. The Statute of 1925 (15 and 16 Geo. 5) re-introduced the gold standard which remained in force until abolished by an amending Act dated 21st September, 1931 (21 and 22 Geo. 5). Counsel for the appellant argued before this Court at very great length that, because the respondent received during the years sterling was off the gold standard his salary at less than its gold value, therefore the Turkish pounds of salary are not gold pounds. In my opinion this is a fallacious argument. The manner in which respondent was paid during certain periods of his service in Cyprus is quite irrelevant to the only serious issue in this case, viz., what is the meaning to be given to the term "28.80 pounds Turkish at 110", which appellants admit their liability to pay respondent as his monthly pension. If appellant's obligation is to pay salaries in Turkish gold pounds, as the Court below found, the fact that the Bank paid respondent something less can in no way alter the nature of its obligation towards him. At the time the Pension Fund Regulations were issued there was only one Turkish pound in existence and that was the gold pound. This continued to be the only Turkish pound up to 1915 when paper pounds were introduced for the duration of the War. Counsel for the appellant stated in argument that "the salaries down to 1915 were admittedly in gold." It is therefore astonishing to find appellant's Manager for Cyprus declaring in evidence "in contract of plaintiff the pound referred to may have been the gold pound or paper pound." Since this witness was obviously aware that there were no paper pounds in existence until ten years after plaintiff's contract his answer is one which he must have known was not correct. The learned Judge at the trial did not accept Mr. Jones's evidence on this point, and I think he had sound reasons for so doing. The Law by which paper currency was introduced in Turkey in 1915 is set out at p. 97 of the record in *Chakarian Case*. Article 3 states that the paper notes are redeemable in gold six months after the conclusion of peace at Constantinople.

The manner in which salaries were paid by the appellant Bank after the introduction of a paper currency in Turkey in 1915 is set out in great detail by Sertsios, J., in his judgment

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in the *Esmerian* v. *The Ottoman Bank*. Up to 1915, as counsel for the appellant has admitted, all salaries of employees were in gold pounds, which are shown in the books of the Bank as " Ltqs.", *i.e.*, pounds Turkish. From the evidence and the numerous documents referred to it is quite clear that all salaries of employees continued up to the present to be expressed in the same way, *i.e.*, in pounds Turkish (see Salary Book, Exh. H.L.J. 3). From 1915 onwards, while salaries remain as they always have been in gold, frequent bonuses were given to compensate the employees for the rapid depreciation of Turkish paper pound. There were bonuses of 25%, 30%, 90%, 125%, 150%, up to 200% in 1920, and the amount of salary payable was arrived at by converting the basic Turkish gold pound of salary into pound sterling by multiplying them by the factor $\frac{1}{4.1}$, and then converting the number of sterling so arrived at into Turkish paper pounds at the average rate of exchange for sterling for the three months preceding. So long as this procedure was followed the employees were being paid in the gold equivalent of their salaries. By a decision of the Managing Committee dated 18th May, 1921, the rate of the pound sterling for the payment of salaries for May and June was fixed at 451. It is evident from the preceding exhibit that the rate fixed for sterling was appreciably less than the real rate, and therefore in May, 1921, employees for the first time received less than the gold equivalent of their salaries. In August, 1923, the appellant Bank began to pay salaries upon a new principle, that is by omitting the intermediate step of converting the basic Turkish pound of salary into sterling, and paying in Turkish paper pounds the number arrived at by multiplying the " basic Turkish pounds " of salary by 4.1. The effect of this decision was to reduce further the salaries to about one-half of their gold equivalent. An examination of the exhibit produced in *Chakarian's Case* shows that the " basic Turkish pound " of salary is identical with the pounds Turkish (Ltqs.) always used in the Bank's books in regard to salaries before the introduction of paper pounds, that is to say Turkish gold pounds.

It is important to note that the reason why the Bank did not continue to pay its staff in gold pounds after the introduction of paper currency was not that the staff were not entitled to be paid in gold, but because " in the present circumstances the Bank must scrupulously preserve its stock of gold." Had the General Management considered that the employees had no right to be paid in gold undoubtedly it would have said so (*Chakarian Record*, p. 79).

In giving evidence in *Chakarian* v. *Ottoman Bank*, Mr. Reid, the Joint General Manager in Constantinople, stated that an employee retiring from the Bank in Constantinople

and going to live in London would receive his pension in sterling at the rate of 110 Turkish = £100 sterling. Similarly a clerk employed in Cyprus would have his pension upon the same basis. At that date (June 1927) sterling was gold and therefore in Mr. Reid's opinion the Bank's obligation was to pay pension in Turkish pounds gold, for these were the only Turkish pounds 110 of which were equal to £100 sterling. (The Turkish paper pound was then about one-eighth of its gold value). Mr. Reid's evidence is a clear admission that the pounds Turkish of pension are gold pounds, and that the Bank's obligation is to pay these gold pounds.

So much for the manner in which appellant has considered his obligation to pay salaries from the introduction of paper currency in Turkey. I now return to consider appellant's claim that there is no express agreement between the parties that respondent's salary of Ltq. 45 was gold. To establish this argument appellant must show that " pounds Turkish at 110 " does not express parity between two currencies in gold. He, therefore, pleads that the rate of exchange of 110 Turkish gold pounds to 100 English pounds was merely a conventional rate of exchange. The ratio of 110 to 100 expresses either a relation existing in fact between the Turkish gold pound and the English gold pound, or a relation agreed upon between the parties, which arising out of agreement they can change from time to time. Appellant's manager for Cyprus states: " The basis of payment of pensions and salaries is gold, but I say the fixed ratio is 110 to 100. This is a conventional ratio." A little later in his evidence Mr. Jones says: " The 110 to 100 is the parity between Turkish gold pound and English sovereign. The convention is the same thing. Parity is the value of gold coin in one country in relation to that of another." It is obvious that the ratio of 110 to 100 cannot be a relation dependent on any convention and at the same time express parity in the gold coins of two currencies. Mr. Jones's contradictory evidence on this point shows how embarrassing it is for the appellant to contend that the ratio of 110 to 100 expresses at one and the same time a relation agreed upon between the parties, and also parity between the gold coins of two currencies. Appellant's counsel apparently took a view different from that of Mr. Jones for he stated in argument: " The ratio of 110 to 100 was the actual relation of Turkish gold pounds to English gold pounds." In answer to a question by the Court as what was the Turkish pound referred to in appellant's letter of 29th September, 1931, (Exh. A.D. 7) as " Ltques at 110 " counsel for the appellant said: " There is no Turkish pound that bears to the English gold pound the relation of 110 to 100 other than the Turkish gold pound." Appellant's

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claim that the ratio of 110 to 100 is a conventional ratio is contradicted by the evidence of Mr. Jones, by the statements of the Bank's counsel in the argument before this Court, and by the evidence given in *Chakarian Case* and *Esmerian Case*. This claim further is definitely disproved by evidence which the learned trial Judge accepted as correct—evidence which was not cross-examined upon—that the ratio of 110 to 100 is a real ratio between the Turkish gold pound and the English sovereign in that it expresses the respective weights of the two gold coins, and the Court has made a finding of fact to this effect. The evidence thus shows that there was an express agreement between the parties that the Ltqs. 45 of salary were gold pounds, as the Court below has found. Appellant agreed in his letter (Exh. A.D. 7) to pay respondent a monthly pension of "Ltques 28.80 à 110=Lstg. 26.3.8." Counsel for the Bank definitely admitted—and in face of evidence he could not do otherwise—that the only Turkish pound bearing the ratio to the English sovereign of 110 to 100 was the Turkish gold pound—a fact which is proved beyond all doubt by the evidence. The inference of necessity to be drawn from counsel's admission is that the appellant has agreed that the "Ltques 28.80" of pension are gold pounds. Notwithstanding this counsel contends that the Privy Council decided in *Chakarian* v. *The Ottoman Bank* (1) that the salary was not gold. The issue raised in that case was whether or not the plaintiff had been wrongfully dismissed. After finding on the main issue that the decision of the lower Court was correct the judgment states that it agrees with the view of the Supreme Court "both as to the measure of damages and the basis on which—for that purpose—the pension to which the respondent would have been entitled is to be calculated." The only alteration made is to substitute the proper date in accordance with the Pensions Regulations on which the pension is to be calculated, and further that the rate of exchange to be taken for conversion of the pension into sterling is the rate at the date of dismissal. As I understand Lord Thankerton's judgment it expresses no opinion upon the question of whether or not the salaries are payable on a gold basis. The facts in the present case are quite different from those in *Chakarian Case*, and any finding by the Privy Council upon quite dissimilar facts would not be binding on this Court. The question of fact to be decided in this case is as to the meaning to be placed upon the term "Ltques at 110", which the appellant uses to define the Turkish pounds he admits liability to pay respondent as pension. A decision of the Privy Council on other facts, even if there were such a decision, would not preclude the trial Court from

(1) (1930) A.C. 277.

making a finding upon quite different facts. On this point I would refer to the *Esmerian Case* in which both the trial Judges held that the pounds Turkish of salary are gold pounds, and they assessed damages upon this basis. This judgment was upheld on appeal, at the hearing of which the decision of the Privy Council in *Chakarian Case* was cited. If the appellant Bank had considered that the Privy Council had decided that salaries were not payable upon a gold basis, they were bound to succeed on an appeal to the Privy Council in having the damages substantially reduced, as having been assessed upon a wrong principle. The appellant Bank, however, did not think fit to appeal, or rather, abandoned its appeal after obtaining conditional leave.

It is important to bear in mind that in whatever manner pensions are paid by the appellants they must be the same for all their employees. I will cite the view I expressed on this point in the *Esmerian case*, the file of which is by agreement of the parties before the Court on this appeal. "This 'Capital Fund' (the Pension Fund) was provided by the Bank when the fund was constituted in Turkish pounds, worth 18*s*. sterling, in other words, pounds gold. The contributions, both by the employees and the Bank, before, during and after the War, have always been in gold, as they are at present. Mention is made in the evidence of an officer of the Bank retiring in Cyprus and being paid his pension in sterling. This confirms the view that the pension scheme is one and must be the same for all employees of the Bank irrespective of where they perform their service. There being one fund for all the employees of the Bank, of which the capital and the contributions are gold, there can be only one mode of calculation of pension, viz., in the same species of money as the Fund and its contributions."

The exhibits produced show that the contributions to the Pension Fund are made by deduction from the salary in basic Turkish pounds and not from the amount in paper actually paid to the employee. The appellant is, therefore, obliged to argue that pounds Turkish (Ltques), in which all salaries have always been expressed in the Bank's books, means Turkish gold pounds as regards deductions for the Pension Fund, but paper pounds as regards salaries and pensions. Mr. Jones has stated that respondent's salary of Ltques 45 could be paid in paper pounds (worth about one-tenth of the gold pound). No attempt was made to prove this allegation. Counsel in argument made a similar submission that if the Turkish pound became worth only one penny the Bank could discharge its obligation to respondent by paying him 45 pound notes worth one penny each in English currency. If the appellant were of opinion

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that he could discharge his obligation to respondent by paying him a monthly pension of 28.80 pounds paper it is surprising that he should have admitted liability to pay a pension ten times greater than he is obliged by law to pay.

The appellant is in a serious dilemma if the " Ltqs " of salary are not gold pounds they must be Turkish paper pounds, for these are the only two kinds of pounds existing in Turkish currency. They cannot possibly be paper pounds because 28.80 of such pounds are not equivalent to £26.3.8 sterling, but only to about £2.10.0 sterling. There is no intermediate pound lying between the gold pound and the paper pound. The appellant Bank in its letter (Exh. A.D. 7) has defined the pounds of pension which they admit the liability to pay, *i.e.*, " Ltques at 110." By the very terms of this definition paper pounds are excluded. The only pound remaining which can come within the definition is the gold pound. In my opinion all the evidence at the trial and the evidence in the two other cases which are before the Court on this appeal all lead to one conclusion and that is that the salaries of the employees of the appellant Bank invariably shown in the bank's books as " Ltqs " are Turkish gold pounds.

Appellant's obligation being to pay the respondent a certain number of Turkish gold pounds per month it remains to consider how such obligation can be discharged for the purposes of a judgment in Cyprus. Counsel for the respondent submits that there is a contract expressed in foreign currency and, whatever debt is created, it must be paid in local currency at the actual rate of exchange when the debt becomes due ; that is to say, so many pounds in Cyprus currency should be given to the plaintiff to enable him to buy the foreign currency due to him, as if it were a commodity.

In the case of *Di Fernando* v. *Simon, Smits and Co., Ltd.* (1) the Court held that, where damages for a breach of contract are fixed in a foreign currency, for the purposes of a judgment of an English Court those damages must be translated into English currency at the rate of exchange prevailing at the date of the breach.

In *Barry* v. *van den Hurk* (2) Bailhache, J., expresses the same view saying . . . . " the damages must be fixed as at the date of default, and therefore the sum to be awarded as damages is such a sum in English currency as would at the rate of exchange prevailing at the date of default produce the sum in foreign currency."

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(1) (1920) 2 K.B. 704.
(2) (1920) 2 K.B. 709.

In the *S.S. Celia* v. *S.S. Volturno* (1) the House of Lords follow the decision of *Di Fernando* v. *Simon, Smits and Co., Ltd.* Lord Buckmaster and Lord Parmoor each cite with approval the following passage from the judgment of Vaughan Williams, L.J., in *Manners* v. *Pearson* (2): "It seems plain that his mode of computing the value of foreign currency in English sterling, and thus converting the one currency into the other, is based upon the damages for the breach of contract to deliver the commodity bargained for at the appointed time and place, and, if this is so, it follows that the date as of which the value must be ascertained is the date of the breach, and not the date of the judgment." These authorities establish now beyond any doubt that where a person has a judgment for a debt in a foreign currency the Court will order payment to be made in so much local currency as will purchase the foreign currency on the date the debt is payable.

The decision appealed from being as to the meaning of the contract between the parties, and thus purely a question of fact, the appellant Bank could only succeed if it established that the decision was such as could not reasonably have been arrived at upon the evidence. This the appellant has entirely failed to do. I fully concur with the conclusions arrived at by the learned trial Judge—conclusions that are amply supported by the facts proved in evidence. For the reasons I have stated I am of opinion that this appeal should be dismissed with costs, and the cross-appeal dismissed without costs.

Sertsios, J.

SERTSIOS, J.: This is an appeal from a judgment of the Divisional Court, Nicosia, whereby the defendant Bank was adjudged to pay the plaintiff: (*a*) A monthly pension to the amount of 28.80 Turkish pounds gold to be translated into Cyprus currency at the rate of exchange prevailing on the date when the pension became due; (*b*) To pay the plaintiff's pension which became payable on the 31st January 1932, *i.e.*, 64 % of 45 Turkish pounds gold, in Cyprus currency, at the rate of exchange prevailing on the 31st January, 1932; (*c*) Costs of this action, but no order as to interest.

The first ground of appeal is that the Court below has found erroneously that the salary of the plaintiff was 45 Turkish gold pounds, and this ground is based on the following reasons:—

(*a*) Because there is no express agreement that the plaintiff's salary should be in Turkish gold pounds;

(1) (1921) 2 A.C. 544.
(2) (1898) 1 Ch. 581.

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(*b*) Because the plaintiff from 1921 to February, 1923, when serving in Turkey was not getting his salary in Turkish gold pounds, nor in a sum equivalent to 45 Turkish pounds gold;

(*c*) Because from February, 1923, up to the year 1925, and from September, 1931, to 31st December, 1931, during which time the sterling was off the gold standard, the plaintiff was receiving his salary not in gold or in equivalent to gold.

Before dealing with the first ground of appeal it may be as well to state shortly the circumstances of this case. The respondent (plaintiff in the action) entered the service of the defendant Bank in March, 1903. He joined the permanent staff in the year 1905, when he signed the Regulations known as the "Caisse de Pensions et de Retraites" which formed the contract between the plaintiff and the defendant Bank. Plaintiff, according to his own evidence, served in Turkey from May, 1922, to February, 1923, with a salary of 45 Turkish pounds gold per mensem. In February, 1923, plaintiff was transferred to Cyprus. Before leaving for Cyprus the Director of the personnel, Mr. Scanziani, who gave him the order of transfer to Cyprus, is alleged to have told plaintiff, as regards his salary, that it would be the same as formerly, and that he was going to draw it in parity, namely, 110 Turkish gold pounds to 100 English. Before coming over to Cyprus plaintiff was drawing 45 Turkish pounds a month. When he came to Cyprus, plaintiff was appointed Manager of the Larnaca branch establishment of the defendant Bank with a salary of 45 Turkish pounds gold, and not paper, according to his contention, its equivalent in sterling being £40.18.1, which he was actually receiving in Cyprus, apart from his subsequent increases, amounting to about £4, in form of indemnity. On the 30th December, 1930, he got his salary for the month as above, namely £40.18.1 equal to 45 Turkish pounds gold, less his contribution to the Pension Fund, that is to say, he was paid in parity, as told before he left for Cyprus. On the 19th September, 1931, he received a letter from the Regional Manager of Cyprus branch of the Bank, Mr. H. L. Jones, by which he was informed that by order of the General Management he was to be retired on pension as from 1st January, 1931. The date of the General Management's letter putting him on pension was the 17th September, 1931, when the gold standard was still in force. The English sterling went off the gold standard on the 21st September, 1931. On the 5th October, 1931, plaintiff wrote a letter, in which he said that he was going to discuss the amount of his pension which ought to be calculated on the sum of Ltques gold 45, etc. Plaintiff stated that he

called it gold, inasmuch as it was always calculated at 110 to 100 which is, according to his contention, the ratio of Turkish and English gold coins. On the 30th September, 1931, he got his salary of £40.18.1 less contribution to the Pension Fund, but he said that there was then a depreciation of about 20 per cent. in sterling, and on the 5th October, 1931, he wrote a letter to the defendant Bank as to his pension (though not specially as to his salary), which, he says, was in the nature of a protest against the way his pension had been calculated by the General Management. The defendant Bank by a letter of the General Management refused to pay any attention to his claim. Hence the present action.

Coming now to the first ground of appeal, with which I propose to deal, counsel for the appellant Bank argued in this Court that " the plaintiff used to get 45 Turkish pounds *basic*, that this would be either 45 Turkish paper pounds or what was legal tender for the payment of 45 Turkish pounds to the plaintiff." He, furthermore, argued that in the year 1922 the legal tender was the paper pound, and one could pay plaintiff only 45 Turkish pounds paper.

According to plaintiff's evidence, while at the head office at Constantinople at that time, he was drawing £27 sterling, a supposed equivalent to his salary of 45 Turkish pounds and not £6 as he would, if Mr. Clerides' argument were correct. The defendant Bank obviously did not even ever dream of acting in accordance with Mr. Clerides' theory. It would appear, however, that owing to the rapid depreciation of the Turkish paper pound, the Bank itself fixed a rate, which was not the actual and real rate of exchange. According to plaintiff the actual rate of exchange at that time was 7.85 paper Turkish pounds for an English pound.

Now, before discussing the points raised in the grounds of this appeal, I consider it necessary to deal first shortly with the evidence of some of the main witnesses in the case. Plaintiff in his evidence stated that he called his salary gold because it was always calculated at 110 to 100, which is the ratio of Turkish and English gold pounds ; he further stated that this ratio of 110 to 100 was a reality and not conventional, as contended for the defendant Bank, because this calculation of 110 to 100 is based on different weights of two gold coins. He added that this ratio of 110 to 100 was the parity between the two pounds, and that he received his salary on this basis, which represented actual relative values. Plaintiff's witness, Ohanes Chakarian, stated in evidence that after January, 1921, in Turkey they got such salary as would enable them to convert on the day of payment into money which would buy equivalent of their salary in gold, but that in May and June the Bank stopped

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this method and the employees protested. This remains uncontradicted. So the salaries were received by the employees under protest. Now this equally applies to plaintiff (respondent), who said that the Bank had *fixed the rate*, and his salary of 45 Turkish pounds was thus reduced to £27—they would be equivalent of his salary in sterling. The same witness Chakarian said in evidence that, when he came over to Cyprus in May, 1923, the relation of 110 to 100 was a real one. According to the evidence of these two witnesses, *i.e.*, the plaintiff and Chakarian, the salary of the employees of the Bank was calculated at 110 to 100, and that was the ratio of the Turkish and English gold pounds, 110 Turkish gold pounds being the equivalent 100 English gold pounds. Referring to the same point the Regional Manager of the Ottoman Bank in Cyprus, stated in evidence that the defendant Bank in Cyprus pays its employees at the rate of 110 to 100, which is a *conventional* rate. But further below on same page made the following statement: "When plaintiff came to Cyprus we were working on 110 to 100, which was not the real rate but the legal rate!" he calls it first a *conventional* rate and then a *legal* rate. I don't know what he meant, when in this way he described the rate, but one thing is quite clear, that the counsel for the defendant Bank, addressing this Court, said distinctly that the ratio of 110 to 100 is a conventional ratio, and when asked to say what he meant by this expression, he said that *conventional ratio* is a ratio agreed to between the Bank and the employees. The witness for defendant Bank, Mr. Jones, said, further, the following: "The basis of payment of salaries and pensions is gold, but I say the fixed ratio is 110 to 100. This is a conventional ratio." So the witness calls it this time a *conventional* ratio only! Later, however, Mr. Jones, dealing with the very same subject, stated that the 110 to 100 is the parity between Turkish gold pound and English sovereign, and he, further, gave quite an accurate definition of the expression "parity" as follows: "Parity is the value of the gold in coin of one country in relation to that of another." No doubt that the latter opinion of Mr. Jones as to ratio is sound and correct. Indeed, the ratio represents relative weights of the same matter. Therefore, it cannot be the subject of variation by agreement, namely *conventional*. How can it be conventional, when it expresses the relation that exists in fact? Consequently the figure 110 cannot be anything else but Turkish pounds gold, corresponding to £100 which represents sovereigns according to the evidence of the same witness. The same witness, Mr. Jones, stated that the defendant Bank is a Turkish Bank, and all its contracts are drafted in Turkish pounds; also that the plaintiff's salary as that of other officials is fixed on Turkish pounds, and his pension also

is fixed on Turkish pounds. Consequently the defendant Bank's obligation is to pay his pension in Turkish pounds under the contract. As a matter of fact the Direction Générale of the defendant Bank by a letter dated the 17th September, 1931, informed the plaintiff that, as from the 1st January, 1932, he was to be retired on pension, and that the pension payable to him was on the following basis: "Ltques 28.80 at 110=£ st. 26.3.8." So plaintiff's pension was fixed at 28.80 Turkish pounds, at the rate of 110 to 100. I have already stated that from the evidence adduced it is quite clear that the figure 110 is unquestionably with reference to gold. That being so, plaintiff's salary of 45 Turkish pounds must be 45 Turkish pounds gold, and necessarily his pension being the 64% of such salary must be gold. But, even assuming that plaintiff's salary was not gold, his pension must be in gold on another ground. Mr. Jones said that the Pension Fund, referred to in the Regulations, is a separate fund, and that the contributions to it are contributed in parity of 110 to 100 by the employees of the Bank. Namely, in other words, the contributions so paid by the employees of the Bank are in gold. It clearly follows that the pension which must be paid out of such Pension Fund must be in gold. To strengthen this view, however, let me deal with some other parts of Mr. Jones's evidence. Mr. Jones said that in the contract of the plaintiff the pound referred to may have been the gold pound or paper pound. But plaintiff joined the Bank in the year 1905, when the only pound existing was the Turkish pound gold, a fact of which Mr. Jones must certainly have been cognisant. How then could the pound referred to in plaintiff's contract have been a Turkish paper pound? The paper Turkish pound, as a fact, was unknown in Turkey prior to the promulgation of the paper currency Law in the year 1915. Again Mr. Jones stated that, if plaintiff had 45 pounds per month, it was worth 45 Turkish pounds paper money according to Law in Turkey. But, according to plaintiff's evidence, the 45 pounds paper money was approximately equal to £6 only. If so, why the defendant Bank should have paid plaintiff £40 in sterling as an equivalent of 45 paper Turkish pounds? This is an impossible proposition. Mr. Jones in his evidence also said that on the 5th October, 1931, plaintiff wrote a letter to him in which he was raising the points he has raised in this action. He referred the matter to the Direction Générale and communicated their reply to the plaintiff. In the reply in question, being clearly of an evasive nature, they said that plaintiff's claims were contrary to the Regulations. But Mr. Jones quite rightly, when asked, replied that there is nothing in the Rgulations as to these points.

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So far, I think, I have sufficiently dealt with the main parts of the evidence of the Regional Manager of the defendant Bank, Mr. Jones. Now I come back to some points raised by counsel for defence in this Court. Mr. Clerides argued, *inter alia*, that, even if there was an express agreement between the plaintiff and the defendant Bank that his pension should be £26.3.8. sovereigns the Bank could pay him the same amount in currency notes.

But by the agreement based upon the Regulations what the defendant Bank is bound to pay the plaintiff is not the amount of £26.3.8, but that of 28.80 Turkish pounds gold. And to pay it, they must pay its equivalent in Cyprus currency notes at the rate of exchange existing on the day on which the amount of the monthly pension of the plaintiff becomes due and payable, inasmuch as our Courts in the Colony have no power to order payment except in local currency. Consequently the case *In re Société Intercommunale Belge* in 49 T.L.R. 8, cited by Mr. Clerides, is not applicable to the present case. But the case of *Société des Hotels Du Touquet-Paris-Plage* v. *Cumming* (1) is applicable. In the case *Manners* v. *Pearson and Son* (2) Vaughan Williams, L.J., although he had delivered a dissenting judgment, did not as regards the principle concerning the rate of exchange differ from the rest of the Court. He explained his view as follows:— "It seems clear that in an action in whatever form in English Courts for the recovery of a debt in a foreign currency the amount of the English judgment or order must be expressed in English currency, and that the amount of the English judgment or order must be based on the quantity of English sterling which one would have to pay here to obtain in the market the amount of the debt payable in foreign currency, namely, the amount payable, according to the rate of exchange." Mr. Jones must have been cognisant of the principle stated by Vaughan Williams, L.J., when he said that with £26.3.8 Cyprus currency notes offered by the Bank, plaintiff could not buy 28.80 Turkish gold pounds. Counsel for defendant Bank insisted on saying in this Court that the ratio of 110 to 100 was a conventional one, between the Bank and its employees. But in answer to a question put to him by the Chief Justice on this point, he admitted that outside the Bank any one would obtain for 110 Turkish pounds gold 100 English pounds sterling. He thus in effect admitted that the relation was not conventional but a real one, which is directly contrary to his submission, for which he so strenuously contended throughout the appeal. I have forgotten to say that Mr. Jones

(1) (1921) 3 K.B. 459 at p. 462.
(2) (1898) 1 Ch. 581.

stated in evidence that after January, 1932, there was a free market for gold in Cyprus, as there was in England, the sovereign in such free market being worth 23*s.* about. Consequently his statement that one paper pound sterling is equal to a sovereign, is contrary to fact.

Counsel for the defendant Bank replying to a question from the Bench said the following: "There is no Turkish pound that bears the relation to the English gold pound of 110 to 100 other than the Turkish gold pound."

But, what was the plaintiff's salary which was treated as the basis upon which the amount of the pension payable to him had been calculated? Both parties agree that the plaintiff is entitled to receive as pension 64% of the salary he was drawing on the 31st December, 1930. This pension the Bank state in their letter amounts to "Ltques 28.80 at 110" *that is to say £26.3.8 in pounds.* As, however, the Cyprus pound, in the same way as the English sterling, was on the date in question, *i.e.*, on the 31st December, 1930, on the gold basis, unquestionably the £26.3.8 are pounds sterling gold. Consequently, the pension having been fixed on the 31st December, 1930, as £26.3.8 gold, it must continue to be so paid irrespective of what may happen to English or Turkish currency after the 31st December, 1930. Apart from this, the decision fixing the plaintiff's pension was taken by the General Management on the 17th September, 1931, when sterling was still gold. Therefore, the sum of £26.3.8 fixed by the General Management are gold pounds. No fall of sterling was contemplated on that day.

Counsel for defendant Bank also argued in this Court that the Privy Council's decision in *Chakarian's case* governs the present case. The Privy Council, however, by their judgment showed that they never for one moment accepted appellant's contention that the Bank could discharge its obligations by paying one Turkish pound paper for each basic pound of salary, with which basic pound I propose to deal later. It is more than likely that the Bank's counsel at the hearing before the Judicial Committee showed the same common sense as the Bank's counsel did at the trial of that case before the District Court, where Mr. Ronald Smith said that he was unable to support such contention.

I may perhaps deal with another point of plaintiff's evidence with reference to the salaries being paid on a gold basis by the defendant Bank.

Plaintiff stated in evidence that on the 31st December, 1930, he had received his month's salary in money equivalent to gold. This stands uncontradicted. It is a fact that on the 31st December, 1930, the pound sterling, and so the Cyprus paper pound note, was on the gold standard.

Consequently, 110 Turkish pounds was equivalent to £100 sovereigns. The ratio was then, as always, 110 to 100. If 110 Turkish pounds were equal to 100 sovereigns, *i.e.*, gold, certainly the 110 was gold, as the rate of 110 to 100 was the parity between the English gold coin and the Turkish gold pound. It would be ridiculous to contend that the figure 110 was with reference to Turkish paper pounds, being well known that 110 Turkish paper pounds at that time were hardly equivalent to £11 sterling. Therefore, on the 31st December, 1930, when plaintiff drew his salary for the month, the 110 Turkish pounds should of necessity have meant 110 Turkish pounds gold. So the salary which plaintiff received at that date was money equivalent to gold, as he himself rightly stated in evidence.

Counsel for defendant Bank arguing in this Court said that in the same way the Government of Cyprus, even if the £1 currency note be depreciated, will pay the salaries to its employees in currency notes of £1 each. The Government of Cyprus, however, dealing with its own monetary unit, has got the power to do so and say, as it were *ex composito* or κατὰ συνθήκην, that a gold sovereign shall be equal to £1 currency note. But what power such Government can have to adopt the same course in dealing with foreign money? How can the Government of Cyprus interfere with the monetary unit of a foreign country, *e.g.*, Turkey, and say that one Turkish pound gold is equal to one Cyprus currency note? By what international authority or any other legal means could the Government of Cyprus, without manifestly violating what we know as the comity of nations, oblige the holder, say, of 50 Turkish pounds gold to sell same in Cyprus fo £50 Cyprus currency notes of one pound each, being well known that such Cyprus currency note or English sterling is off the gold standard and that the Turkish gold pound is higher in value by 3*s.* or 4*s.* according to Mr. Jones's evidence? According to Mr. Jones both in England and Cyprus there was a free market for gold, as I have stated above, notwithstanding the existence of various orders and proclamations by virtue of which currency notes had become a legal tender. The Government is in a position to make any conventions regarding currency, and such conventions are binding on all its subjects, inasmuch as the Government conventions have the force of law, if so made to have. But other conventions would be binding only upon the parties to the convention.

Counsel for the defendant Bank dealing with paragraph 1 (*a*) of appellant's grounds of appeal, argued that there was no express agreement that plaintiff's salary should be 45 Turkish pounds gold. But plaintiff joined the Bank in

the year 1905, when there was but one legal tender in Turkey, namely the Turkish gold pound. The same counsel arguing in this Court stated that the plaintiff's salary right up to the year 1915 was admittedly in gold. What other express agreement then is required? By paragraph 1 (*b*) of the grounds of appeal it is, further, admitted that even right up to the year 1921, in spite of the promulgation of the currency Law in Turkey in the year 1915, plaintiff was receiving his salary in gold. This is quite clear because the said ground of appeal reads: "Plaintiff from 1921 to February, 1923, when he was serving in Turkey was not receiving his salary in Turkish pounds gold, nor in a sum equivalent to Turkish pounds gold."

As to the period of 1921 to 1923, plaintiff has already given an explanation, having said that the Bank had itself then fixed its own rate, in consequence of which he was drawing during the period in question only £27 sterling a month, the would-be equivalent of his salary of 45 Turkish pounds gold. The witness for plaintiff Mr. Chakarian stated in evidence, as I have already mentioned, that all the Bank officials duly protested against this arbitrary fixing of the rate of exchange. From Exh. A.H.R. 5, namely, a decision No. 12 of the General Management appearing on p. 93 of the "Record", it is clear that from July to September, 1920, the salaries of the staff were being paid on the average of the selling rate of the pound sterling registered at the Head Office during the three months April to June, and that that rate worked out at 451 piastres for sterling. So the actual rate of exchange at that time for sterling was 451 piastres. But from an extract from Minutes No. 17 of the Management Committee, dated the 18th May, 1921, I notice that the mode of payment of the staff salary was changed, and the salaries for May and June, 1921, were no longer being paid on the average of the selling rate of the pound sterling, but at the rate of 451 piastres the pound sterling for basic salaries up to £tqs. 55, which rate was fixed by the Bank regardless of what the average of the selling rate of the pound sterling was. This last decision was maintained in force up to the 27th August, 1923, when another rate 410 piastres for sterling was applied. There is nothing, however, in evidence to show what was the real rate of exchange from May and June, 1921, to August, 1923. Plaintiff had gone to Cyprus long before August, 1923, namely, in February, 1923. From his evidence alone we are informed that the actual rate of exchange at that time was 7.85 paper Turkish pounds for an English sovereign, and that he was drawing £27 a month, an alleged equivalent of this basic salary of 45 Turkish pounds gold, resulting from the arbitrary fixing of the rate of exchange by the

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defendant Bank. From the foregoing I can rightly gather that the arbitrary rate in question so fixed by the Bank was the one of 451 piastres for sterling, as against which Bank officials protested, as stated above, and never consented to it.

Counsel for defendant Bank said that plaintiff used to get 45 Turkish pounds basic, and that this would be either 45 Turkish pounds paper or what was a legal tender for the payment of 45 Turkish pounds to the plaintiff. But this is an inconsistent and unintelligible statement. If a basic pound means a paper pound why should they not have called it so, and why they have not offered the plaintiff 28.80 paper pounds Turkish as his pension, that is to say in sterling between £2 and £3 approximately, in place of the £26.3.8, which they agree he is entitled to? From all the material before the Court in this appeal it is abundantly clear that there is the widest divergence between the basic pound and the Turkish paper pound. (See decision of the General Management dated the 27th August, 1923, on p. 95 of the Record). In the case of *Esmerian* v. *Ottoman Bank* I stated the following as to the "basic" pound:

"The decision of August, 1923, states, *inter alia*, the following: 'The *basic Turkish pound* will be converted into paper in accordance with the co-efficient 4.1. But in order to convert the *basic Turkish pound* into paper, it must be something other than paper, because a paper currency cannot possibly be converted into paper. One thing can only be *converted* into another thing of a different nature or genus. Money can only be converted from one kind to another. Consequently, this something, which is to be converted into paper, can only be gold. That the *basic Turkish pound*, therefore, referred to in the decision of August, 1923, means the gold pound cannot be open to doubt.'"

It is, therefore, very surprising indeed that such a clear distinction between the two expressions should have escaped the attention of the learned counsel for the defendant Bank. The case of *Esmerian* v. *Ottoman Bank*, which has been treated by consent as an exhibit in this case, was an action for wrongful dismissal. For the purpose of establishing the amount of damages to which, in my opinion, the plaintiff in that case was entitled, I dealt with the question of the rate of exchange, at which he was being paid his salary, at a great length. I will read some other passages from my judgment in that case, which have a direct bearing on the point under consideration in the present case. I am reading from pp. 19, 20, 21 and 22 of my judgment as follows:

"'The actual paper pound and the basic pound of salary having become so different in value, the Direction Générale makes in February, 1920, an important decision,

made undoubtedly with the sole object of maintaining the true nature of the salaries of all its officers, viz., the Turkish gold pounds.'

"Decision No. 13,022.

"By decision of the General Management:

"The salaries of the staff in Constantinople and of the Agencies in Turkey, actually profiting by the percentages and the allowances, will henceforth be payable in the following manner: As from the 15th January, 1920, the gross monthly salary of each employee will be converted into pounds sterling at the rate of 110 Turkish pounds for 100 pounds sterling and the proceeds of conversion so obtained will be paid to each employee in Ottoman Treasury notes at the average selling rate of the pound sterling during the three months immediately preceding the current month.

"For example an employee whose monthly salary was £tq. 55, would receive $\frac{55\times100}{110}$=£50 sterling. If the rate of exchange for sterling was 451 piastres, as it was, for example, in January, 1920, the salary actually received would be 50×451=22,550 piastres, or 225.50 Turkish paper pound notes. This method of paying salaries was continued up to August, 1923, when the Direction Générale make the following decision (see Exh. A.E. 3):

"'Salaries of the Constantinople staff for the month of August will be paid in Turkish paper pounds on the following basis: The basic Turkish pound will be converted into paper in accordance with the co-efficient 4.1, or at the rate of 410 piastres paper for Turkish pound of salary.'

"This is in effect equivalent to the last rule fixed for sterling by the Direction Générale in May, 1921, viz., 451 piastres. The first thing to note about the decision is that it omits all reference to sterling, and secondly that the rate chosen by the Direction Générale was not the true exchange rate. The Turkish paper pound was continuing its downwards flight, and this, to my mind, was the reason of the decision. The Direction Générale was unwilling to keep pace with the rapid descent of the Turkish pound and pay 500, 600 or 700 piastres for each £ sterling of salary. The rate of 410 piastres was much less than the exchange value. It is to be noted that the employees in Constantinople did not agree to this arbitrary fixing of the rate for the Turkish gold pounds, but they had either to accept it or resign.

"It is necessary to point out that this decision only refers to employees in Turkey. Employees in Egypt and Cyprus continue to have their salaries paid on a sterling basis in the manner provided in January, 1920. It is material to examine carefully the words of the last decision, more especially when it is remembered that the Bank claims that salaries are payable only in paper. The learned

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counsel for the defendant Bank in the last paragraph of his address for the defendant states: The Bank would have been justified in paying plaintiff's salary by giving him 55 one pound Turkish notes, as such paper notes were legal tender by law.

"The law referred to by the counsel is in evidence and contained in Exh. A.E. 3, Article 3 of the law in question is as follows:—

"'The equivalent value of these notes shall be repaid in gold at sight or to bearer, *six months after the conclusion of peace*, at Constantinople.'

"From the above it appears that paper notes were to be legal tender up to a date of six months after peace, when they became redeemable in gold. There is nothing in evidence to show that that law had subsequently been altered, and that, consequently, the paper notes continued to be legal tender even after the date fixed by the law. Have the parties consented to the substitution of the basic gold salary which was the only one under contemplation? There being no evidence before the Court of any consent on the part of the employees or of any intimation from the Direction Générale to the staff, I pass to consider whether the Bank has the right to change such a fundamental term of the contract.

"The first thing to note is that this decision governs only the employees in Turkey. It is in evidence uncontradicted and not cross-examined upon that the employees outside Turkey are paid on the gold basis as all employees of the Bank were up to the time of introducing the paper currency in Turkey. The plaintiff states that had he been transferred to Cyprus his salary of £tq. 55 would be £50 sterling $\frac{55\times100}{110}$. From this it follows that the decision does not purport to modify the contract of service for all servants of the Bank. It merely attempts to do so for those engaged in a country whose currency has become about one-ninth of its gold value, or, to put it another way, the Direction Générale did not decide (and the reasons why are obvious) that all its employees would in future be paid $\frac{1}{9}\frac{0}{2}\frac{0}{0}$ of their salaries. This would have had the effect of reducing by half the salaries of all the Bank's officers in countries where the currency is on a gold parity. To enforce such an order would probably have left the Bank without any staff to carry on its business.

"It is thus clear that the terms of the contract of service 'La Caisse de Pensions et de Retraites' are maintained in their full vigour in the case of all employees of the Bank in places where the currency is not depreciated.

"It should be noted that there is *one* Caisse de Pensions, a common fund into which all the staff of the Bank contribute equally. The contributions are made in gold and are

5% of each officer's salary. It is in the nature of capital and must, therefore, exist in gold. The Bank undertakes to supplement this Fund, if it is not sufficient to pay the pensions. (See Article 9 of 'Caisse de Pensions et de Retraites'.) If, however, the Fund was not sufficient to meet the calls upon it, and the Bank did not want to supplement the Fund out of dividends, it had a perfect right to terminate the employment of as many of its officers as it wished (*vide* Article 2 of 'Caisse de Pensions et de Retraites'), but it could only do so upon the terms laid down in the contract, viz., Article 21, but it has not the right without the consent of the employees to vary such a fundamental term of the contract.

"Chapter III of the 'Caisse de Pensions' states that all employees will contribute to the Pension Fund 'le 4% de leur traitement fixe;' and further that the amount of the pension will be calculated upon the basis of '*du traitement fixe annuel.*'

"Before the introduction of a paper currency in Turkey employees were paid a 'fixed salary', but once this money began its downward career, the salaries paid in it were changed from month to month and could not be described as 'fixed'. One thing remains 'fixe', and that was the basic salary in Turkish pounds which kept its gold parity.

"This is another reason to show that in the contemplation of the contracting parties the salaries to be paid were to be fixed salaries on a gold basis, and consequently that payment in a currency which changed from month to month was not in accordance with the 'Caisse de Pensions et de Retraites', Article 9.

"While maintaining the payment of salaries and pensions on a gold basis in accordance with the Caisse de Pensions et de Retraites in the case of employees outside Turkey, the Bank's attempt to substitute another currency for payment of its staff in Turkey is contrary to Article 30 of the Caisse de Pensions et de Retraites, which reads: 'La Direction Générale se réserve le droit de modifier le present Réglément toutes les fois qu'elle le jugera nécessaire et en tant que *les droits ou interets du personnel ne se trouveront pas lésés par ces modifications.*'

"It is obvious from this Article that the Bank's right to modify the terms of the contract between itself and the employees is expressly limited to those modifications in so far as they do not injure the rights or interests of the staff.

"The variation of a fundamental term of the contract which the decision of 27th August, 1923, attempts to carry out, could have results disastrous to the employees. Take the case referred to by the plaintiff (see notes of evidence on p. 10) of an officer retiring in Cyprus and being paid his pension in sterling. If this officer had been transferred to

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Turkey shortly before being placed on pension, his employers could reduce his pension to half its value. This could be done to any employee on the eve of retirement, and the Pension Fund, consequently, would enjoy material relief.

"Once it is conceded, as is claimed by the Bank, that it has the right to fix the number of piastres it will pay for each 'basic Turkish pound' of salary, it follows logically that it can fix any number it pleases. It has fixed 410 which bears no relation to the then exchange value of the 'basic Turkish pound.' It could likewise fix 200 or 100, as it thought fit. It may be said that, if the rate were reduced to such an extent, the Bank would remain without staff, and would be obliged to close its doors. This may be so but this alleged right to vary the contract can only be tested if pushed to its logical conclusions. Once admit there is a right to substitute for gold a payment in paper, the Bank can fix any rate caprice may dictate.

"For all the reasons set out above it is, in my opinion, beyond any doubt established that the unjust and arbitrary attempt of the Bank to alter a fundamental term of the contract in the case of its employees in Turkey is a flagrant breach of the Caisse de Pensions et de Retraites and is without a shadow of right. I am clearly of the opinion that according to the contract the 'Caisse de Pensions et de Retraites' salaries must be paid on a *gold basis*."

From the passages I have just read from my judgment it is quite clear, in my view, that according to the "Caisse de Pensions et de Retraites" which is the contract between the parties, salaries to Bank officials ought to be paid on a *gold basis*.

Working on that basis I adjudged the defendant Bank in the case mentioned to pay the plaintiff the amount of £3,000 damages. My brother Judge, with whom I sat at the hearing of the case, likewise held that damages should be assessed upon the basis of plaintiff's salary being payable in Turkish pounds gold.

The defendant Bank appealed to the Court of Appeal of this Colony against this judgment, but the appeal was dismissed.

The President of the Court of Appeal, however, in his judgment stated that one of the trial Judges decided in that case that plaintiff was entitled to damages on the basis of his salary being payable in gold. In this the learned Chief Justice was mistaken—both the Judges, before whom the case was heard, so decided as I have already mentioned. Though notice of appeal to the Privy Council against that judgment was lodged, the appeal was not proceeded with. Consequently that judgment holds good.

From the foregoing it follows that the plaintiff's salary was undoubtedly 45 Turkish gold pounds, such being the agreement between the parties under the contract known as "Caisse de Pensions et de Retraites," apart from the evidence before the trial Court which amply corroborates this view, as explained already at length. Thus, in my view, the defendant Bank must fail on Clauses 1 and 1 (*a*) of grounds of appeal, and for the reasons equally explained at some length above, they must also fail on the Clause 1 (*b*) of grounds of appeal.

Now Clause 1 (*c*) of the grounds of appeal reads :—

"From February, 1923, up to the year 1925, and from September, 1931, to 31st December, 1931, during which periods the sterling was off the gold standard, plaintiff was receiving his salary not in gold or in equivalent to gold."

As regards the point in connection with the period from February, 1923, up to the year 1925, it was strenuously argued by the counsel for the appellant Bank that plaintiff (respondent) during that time was not receiving his salary in Turkish pounds gold. He contended that the suggestion of the plaintiff (respondent) that paper currency in Cyprus then was of the same value as gold, according to a Proclamation in the *Cyprus Gazette*, was wrong.

A careful examination, however, of the various Orders in Council, with regard to currency in Cyprus, shows that the argument of the appellants is not sound. In Section 2 of the Proclamation, cited as the Currency Proclamation, 1917, it is laid down that "the currency notes of £10, £1 and 10*s*. respectively, to be issued by the Currency Commissioner, shall be redeemed at the expiration of 18 months of the termination of the present war or before that date, should the Government so desire." This Proclamation was later amended by Order in Council dated the 31st January, 1923, as follows :—

"The notes for the value of £10, £1 and 10*s*. issued under the provisions of the Proclamation dated the 5th September, 1917, and published in the *Cyprus Gazette*, dated the 10th day of September, 1917, shall continue to be current and legal tender for a further period from 1st day of March, 1923, until the 31st of August, 1924."

It will thus be seen that the provision in Section 2 of Currency Proclamation, 1917, has not in any way been amended, and has remained in full force and effect. It follows that in the notes issued in pursuance of those orders there is an obligation to redeem them in gold at the expiration of 18 months from the termination of the War.

Now by a Proclamation under the hand of the Governor, dated the 31st day of August, 1921, it is provided that "the 31st August, 1921, shall be taken to be the date and time of

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the termination of the present war, *provided*, however, that nothing herein ordered and proclaimed as aforesaid *shall be taken to affect relations between His Majesty and the Ottoman Empire*, until ratifications of a treaty of peace with that Empire shall have been exchanged or deposited." The war, however, with Turkey was part and parcel of the Great War, and this part of the war was not terminated until the date when a Proclamation to this effect, under the hand of the Governor, was published on p. 27 of the *Cyprus Gazette*, 1924, providing as follows:— "The 6th day of August, 1924, shall be taken to be the date of the termination of the war with Turkey." In effect by the termination of the war with Turkey the whole war was terminated, especially so in respect of a country, like Cyprus, where the interests of an enemy Corporation like the Ottoman Bank were involved. (See *War and Treaty Legislation* by J. W. Scobell Armstrong, on p. 210 *et seq.*).

The effect of this is to make the above mentioned currency orders redeemable in gold at the expiration of 18 months from the 6th August, 1924. Therefore, from the date of the respondent's arrival in Cyprus, *i.e.*, February, 1923, until the Gold Standard Act, 1925 (15 and 16 Geo. 5) came into force, he was receiving his salary in paper pounds, which were redeemable in gold at the expiration of 18 months from the 6th August, 1924. This bears out the statement the respondent made in his evidence that, when he came to Cyprus, in February, 1923, the paper currency was of the same value as gold.

Assuming it, however, to be true that plaintiff (respondent) was mistaken in believing that, when he came to Cyprus in February, 1923, the paper currency was of same value as gold, this could not in any way affect his rights under the contract. The appellant Bank has already allowed him a pension of 28.80 Ltques as from 1st January, 1932, to which he is entitled under the contract. I have stated above that, in my view, this amount of 28.80 Turkish pounds must be with reference to gold. Therefore, if plaintiff, acting somewhat indifferently, omitted to vindicate his rights as to the way of payment of his salary during the period from 1923 to 1925 referred to above, this would not in any way affect his case prejudicially. However, as regards the same period from 1923 to 1925 counsel for the appellant Bank argued in this Court that parity was not 110 to 100 *exactly* during such period. I take this to mean that the difference was an insignificant one, which, assuming even that the Bank's allegations on this point are correct, probably would not have seriously, if at all, attracted plaintiff's attention. *De minimis lex ipsa non curat.*

As to the other point that plaintiff got his salaries for the months of September, October, November and December, 1931, in depreciated currency notes, and not in gold or equivalent to gold, without protesting, I am again of opinion that this would not in any way affect the rights the plaintiff (respondent) had under the contract. But plaintiff, in any event, did not remain inactive after September, 1931. On the contrary on the 5th October, 1931, he sent a letter to defendant Bank in which, according to Mr. Jones's evidence, he raised the same points as in the present case, and he contended that the letter in question was in the nature of a protest against the way in which his pension had been calculated by the appellant Bank. Indeed, what then interested plaintiff vitally, according to his own evidence, was his pension, upon which alone for the rest of his life he had to depend, and not the four months' salary, and I quite agree with him.

The above disposes of Clause 1 (*c*) of the grounds of appeal.

As regards grounds 2 and 3 of appeal, those also have been disposed of, as a matter of course, inasmuch as they entirely depend upon the answer to the 1st ground of appeal.

The only remaining thing now that calls for the decision of this Court is plaintiff's cross-appeal on the point that his monthly salary of £4, described as salary in form of indemnity, should equally be treated as pensionable. It would appear, however, that the only salary considered as pensionable is the one described in the Regulations as "annual fixed salary." (*Vide* Articles 9 and 15 thereof). An increase of salary in form of indemnity presumably ought to be added to the salary known as "*fixed*" and thus become an inseparable part of it, *i.e.*, *fixed* as the original salary. Still the appellant Bank has chosen to call it an increase of salary in form of indemnity, and in the salary book they have made it appear in the column under the heading "Indemnity", and not under that of "Salary", obviously thus intending to draw a distinction between the two terms, *i.e.*, a "salary" and an "increase of salary in form of indemnity." Plaintiff, though in control of all the books of the defendant Bank, does not seem to have ever been impressed by this peculiar description. He never even had the curiosity of enquiring and asking for some explanation from the General Management as to the object of this distinction. He, therefore, must be taken to have agreed and consented to this distinction between "*salary*" and an "*increase in form of indemnity*", and cannot now contend that the indemnity was part of his salary for the purpose of his pension.

Moreover, in Articles 9 and 15 of the Regulations it is clearly laid down that the "fixed salary" of a Bank official is only pensionable, and not an "indemnity."

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Plaintiff himself by his conduct seems to have clearly understood that the increase in form of indemnity was not in the nature of an ordinary increment, as provided by the Regulations. Plaintiff, further, knew full well that under Article 9, paragraph 2, of the Pension Regulations he was bound to cede to the defendant Bank in full proprietorship 5% of his salary and the half during one year of any increment he was receiving. He knew very well that all such sums were regularly retained by the Bank and lodged into the account of the "Pension and Superannuation Fund" for the purposes of pensions. Though well aware of all these requirements of his contract, he complied only with the requirement of Article 9, paragraph 1, but never with paragraph 2 thereof in respect of his alleged increment of salary.

There having been, therefore, no retentions on those increases in form of indemnity, naturally nothing could exist in the Pension and Superannuation Fund to meet his claim as to pension in respect of such increases. Consequently plaintiff's cross-appeal must fail.

In the circumstances I am of opinion that the judgment of the learned Judge in the Court below was right and that his appeal should consequently be dismissed with costs.

The cross-appeal, which concerns only one minor point, in my view likewise fails, as I have already stated, and it should, therefore, be dismissed but without costs, unless any special costs have been incurred by the respondent in the cross-appeal.

Appeal dismissed with costs; cross-appeal dismissed without costs.

The appellant Bank's further appeal to the Privy Council was heard by Lord Blanesburgh, Lord Merrivale and Sir Sidney Rowlatt, and the judgment of their Lordships was delivered by Lord Blanesburgh.

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Lord Blanesburgh

LORD BLANESBURGH:

This is an appeal from a judgment of the Supreme Court of Cyprus affirming the judgment of the District Court of Nicosia at the trial.

The appellants, defendants in the action, are the Ottoman Bank of Nicosia, and the respondent, the plaintiff, is a former official of the bank. Prior to his retirement on the 31st December, 1931, the respondent was serving in the Larnaca branch in Cyprus and the one question which survives for determination upon the present appeal is whether the pension to which, in accordance with the terms of his employment, he then became entitled is, as both Courts in Cyprus have held, a pension payable in Turkish gold pounds translated into Cyprus currency at the exchange of the day, or whether, as the appellant bank

contends, it is due only in pounds of Turkish currency, or, whether so or not is in Cyprus payable only in the currency of the Island at the fixed rate of exchange of 100 Cyprus for 110 Turkish pounds, and that whether the salary pounds be gold or not. The respondent's pension, in other words, according to the view of the bank, so far from being based upon gold, is really in Cyprus a sum expressed in Cyprus currency fixed and invariable, whatever, either intrinsically or in exchange, the value of that currency may be or become. As the Cyprus pound is no longer on a gold basis, and bears in actual exchange to a Turkish gold pound a very much higher ratio than 100 to 110, the question at issue is even now one of substantial consequence to the respondent. To the bank the issue may also be of general importance as affecting the pension claims of other of its retired officials in a position similar or analogous to that of the respondent.

In 1903, the respondent entered the service of the Imperial Ottoman Bank, with which, for all present purposes, the appellant bank may be regarded as identical. In March, 1905, he joined the permanent and pensionable staff, and he then signed a declaration by which he bound himself to adhere to the regulations governing the pensions and superannuation fund of the bank, which, adopted by the Direction Générale in December, 1898, had been in force as from 1st January, 1899. These regulations, as the respondent then further declared, formed an integral part of the conditions of his engagement with the bank.

The regulations are voluminous. Only a few of the articles constituting them need, however, here be specifically referred to. By Article 2, the general management of the bank may at all times of the year discharge an employee, but (Article 3) he receives an indemnity from the pension fund applicable to his case. Each employee (Article 9) cedes to the bank prescribed proportions of his fixed salary and increments. These sums are retained by the bank each month, and lodged by it to the account of the fund. The bank, for its part, is to lodge, every month, to the same account, 6 per cent. of the salaries of the personnel and undertakes to make good the deficiency, if the total of the fund, as so composed, is insufficient to meet pensions then already granted.

By Article 14, the amount of a retired employee's pension is fixed " on the basis of the salary which [he] received on the 31st December of the year preceding that in which he is retired." The date applicable to the respondent's case accordingly is the 31st December, 1930. By Article 15, the amount of pension is calculated for 10 full years' service at 30 per cent. of the employee's annual fixed salary, with 2 per cent. for each of the subsequent years.

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Article 30 is striking. "The general management reserve unto themselves the right to modify these regulations every time they think it necessary, *and in so far as the rights and interests of the personnel will not be injured by these modifications.*"

It is complained that the general management have, on occasions, purported to exercise this power without due or any regard to the qualification imposed by the words above italicised. The powers of the bank, in this behalf, are not, however, in the present case directly in question. But incidentally the article must again be referred to.

There is in the regulations no direct statement as to the currency in which any salary is to be paid. There is, however, in Article 16, expressed in Turkish pounds, a minimum as well as a maximum pension which employees of a particular type may claim. A similar provision in the case of a pension payable to the widow of a deceased employee is to be found in Article 22. It may also be observed that at the date of the regulations the only Turkish pound either known or, (with the possible exception of pounds of equivalent intrinsic value issued in paper by the bank itself), in circulation, were gold coins of a special gold content, and their Lordships can have no doubt that the reference in the regulations was a reference to these Turkish gold pounds.

Nor is the salary to be paid to the respondent referred to in any document then signed by him. The amount was no doubt agreed, and increased from time to time. That it was, *ab initio*, expressed in terms which in the result made it payable in Turkish gold pounds can hardly be doubted. It is, indeed, stated in evidence by the bank that in Turkey prior to the War, the employees' salaries were always paid in Turkish gold pounds.

And here it may be convenient to allude to the origin, with the meaning to be attached to it, of the conversion of Turkish into Cyprus pounds at the rate of 110 to 100. To this conversion, as has already been indicated, and as will later more clearly appear, final importance is attached by the bank. Cyprus pounds were here the equivalent of the English sovereign and this particular ratio which, as is explained, was always followed in the books of the bank in relation to English sovereigns represented a real ratio founded on the actual gold content of two gold coins—a Turkish pound and an English sovereign. In fixing it, the gold content of the Turkish pound was taken to be 7.216 grammes, and that of the English sovereign 7.988 grammes. It is further in evidence and it may here be conveniently added that during the term of the respondent's service in Cyprus—certainly at the critical date, the 31st December,

1930—the Cyprus £1 note and the sovereign were in practice interchangeable. In Cyprus, said Mr. Jones, a witness for the bank, there was no difference between gold and paper.

Now the respondent, on the permanent staff of the bank since March, 1905, was, in 1923, serving temporarily in Constantinople. He had previously been employed in branches in other parts of Turkey. In 1923 he was transferred to Cyprus, and became Chief of the Larnaca office. In that post he remained until the 31st December, 1931, when he was retired. Thenceforth he was eligible for pension, and it is not now in question that in accordance with the pension regulations above summarized, and in view of his length of service, the respondent was entitled to a monthly pension of 64 per cent. of the fixed salary he was receiving on the 31st December, 1930. It is now further agreed that the fixed or pensionable salary of the respondent on that date was one which, expressed in terms of Turkish currency was a salary of 45 Turkish pounds per month. The first, and it may be the final, question for determination is whether these Turkish pounds were any other than Turkish gold pounds representing the pensionable portion of the salary to which, under the terms of his employment, the respondent was then entitled.

It is vital to remember in the consideration of this question that the respondent at the date of his retirement was being employed outside Turkey. Had he then been employed within Turkey—for example, in Constantinople where the official in the *Ottoman Bank* v. *Chakarian* (1), had been employed, different considerations as to his pension rights might have arisen. Here, however, their Lordships are concerned only with the case of an official of the bank who had continuously for about eight years before his retirement been serving abroad—to wit in Cyprus.

Now it is in evidence that on transfer for service abroad no fresh agreement was normally entered into as to the salary payable to the transferred employee by the bank.

In the particular case of the respondent, however, when in 1923 he was transferred to Cyprus, he was informed by the director of the bank, so he says, that his salary—then a salary of 45 Turkish pounds a month, would be as formerly, and that he would draw it in parity, that is he would draw salary at 110 Turkish gold pounds to 100 English.

Objection was taken by the bank to the admission of this evidence ; but the fact that the Turkish pounds on which the translation into Cyprus or English currency depended were throughout the respondent's service Turkish gold pounds is, their Lordships think, clearly shown by what actually happened in Cyprus.

(1) (1930) A.C. 277.

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First on the 21st May, 1926, the respondent was granted an increase in his emolument—a so-called indemnity—expressed as 2 Turkish pounds to be added to the 45 Turkish pounds he was then receiving. He was granted a similar increase as from the 1st January, 1929. It is not open to doubt, their Lordships think, that in each case these were and were intended to be, additions of two Turkish gold pounds to the fixed salary then described in the same currency.

But the most conclusive evidence as to nature of the Turkish pounds in which the respondent's salary in Cyprus was expressed is supplied by the salary book of the bank framed in terms which for the present purposes are of great significance. Every month the respondent on receipt of his salary was required to sign and did sign the salary book. The details specified are always in the same form. For convenience their Lordships take the entry which, of those printed in the appendix, is latest in date. It is the entry for January, 1929.

There, in the 1st column the name of the respondent appears at the head of the "Directing Staff." In the 2nd column headed "Salary £tq." his salary is entered as 45. The third column is headed "Indemnity £tq." In this column the respondent's two increases are entered as £tq. 4. Passing over columns 4 and 5 indicating deductions from the £tq. 49 shown in columns 2 and 3, we find under the 6th column headed "Net salary in £tq." that the respondent's net salary is brought out at £tq. 46.75. The 7th column, the most important perhaps of all in this connection, is headed "Equivalent in £ *s.* *cp.*": and the respondent's equivalent is entered at £42. 10*s.* Then under the 8th column headed "Total in £ *s.* *cp.*, the same figure as in column 7 is brought out, namely: £42. 10*s.* The whole is signed by the respondent.

This entry appears to be free from ambiguity. That the £tq. 45 and £tq. 4 are Turkish gold pounds is proved fact not really in dispute—that the so-called "equivalent" in column 7 is the Cyprus equivalent for a Turkish gold pound and for nothing else. Equally clear is it, when the actual facts are remembered, that the real function of this column was to equiparate in the Cyprus currency, in which payment was actually being made and accepted, the respondent's contractual salary in Turkish gold pounds.

The bank does not accept this view. Even if, contrary to its submission, based upon reasons later to be stated the Turkish pounds referred to are held to be Turkish gold pounds, even so, it contends that the respondent is not entitled, in Cyprus at all events, to any payment other than one in Cyprus currency exchanged at the rate of 110 Turkish pounds for 100 Cyprus pounds. Their Lordships are unable

to accept this contention. They are satisfied that the "equivalent" in Cyprus currency ascertained by that formula was, and was intended to be, a real equivalent. It was merely exegetical of the basic contract. It was a formula applicable only where the result was to produce parity in terms of gold. To both parties it was a convenience that the salary of the respondent, stationed in Cyprus as he was, should be paid in Cyprus currency. But the salary remained a salary due in Turkish gold pounds, and if it had been tendered by the bank in that form it must have been accepted by the respondent. In short, these monthly entries express with clearness, as their Lordships think, the respondent's contractual rights in the matter of salary, and it being now agreed that his pensionable salary on the 31st December, 1930, was 45 Turkish pounds a month, they justify the declaration of the learned trial Judge that the respondent is entitled to a monthly pension of a sum equal to 28.80 Turkish gold pounds; with as a necessary corollary, now that Cyprus currency has so depreciated in terms of gold, that the "equivalent" in Cyprus currency must be calculated according to the rate of exchange, whatever it may be, prevailing at the date when each instalment of pension becomes due.

Their Lordships have reached this conclusion without so far considering the possible effect upon it of the fact that whereas up to 1915 there was substantially no Turkish pound existing other than a Turkish gold pound, there was brought into being on 15th April, 1915, as the result of an Ordinance of that date, an issue of Turkish paper pounds to which were attached the privileges specified in the Ordinance.

The bank goes so far as to say, and it relies in support of its contention on a decision of this Board in the case already cited, that as one result of the issue of these paper pounds, the salaries of the bank's employees, whatever may have been the case before, ceased to be payable in gold. So far, however, as the respondent's salary is concerned, it will be found, their Lordships think, that for so long as he was employed outside Turkey—and that is the only case with which their Lordships are concerned—his position was unaffected either by the Ordinance or by any pronouncement of the bank following upon it. In order, however, to appreciate the true position in this respect and also to ascertain the bearing, if any, of the *Chakarian* decision upon the respondent's rights, it is necessary to go into some little detail.

By Article 1 of the Ordinance in question the Ministry of Finance was authorized to issue £tqs. 6,583,094 of paper money against the deposit of effective gold for 150,000,000 francs. By Article 2 the acceptance and circulation of

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this paper money exactly in the same way as cash was made obligatory in all the territory of the Empire in all transactions, either between private parties and the Government or between private parties themselves. By Article 3 the counter-value of this paper money was to be reimbursed in gold at sight and to bearer, six months after the conclusion of peace at Constantinople. By Article 4 such of the paper money as should not have been presented for reimbursement within the five years following the date fixed in Article 3 was to be prescribed to the profit of the Treasury.

Now the effect of this Ordinance is, of course, a matter of Turkish law, with reference to which no evidence was tendered at the trial. But its somewhat remarkable provisions are alluded to in the Supreme Court. It is pointed out by Sertsios, J., that the notes were to be legal tender only up to a date of six months after peace, an event which the Chief Justice points out occurred on 6th August, 1924. It may also be questioned whether these currency notes were ever made legal tender for any payment under a Turkish contract which by that contract had to be made outside of Turkey. These matters, however, have not been discussed in the Courts below and their Lordships in the absence of evidence as to Turkish law, are not in a position to pronounce upon them now. They need not, however, do so. For it is clear to them that not even in Turkey did the bank ever assert a right to meet the claims of its employees hitherto paid in Turkish gold pounds by tendering them Turkish paper pounds. So far as the employees of the bank outside of Turkey were concerned, there is no indication that any change at all was made in the manner of paying their salaries hitherto always paid on a gold basis. As for the employees in Turkey proper the bank did from time to time purport to alter the salaries, but nearly always by way of increase. In the present case, which is not concerned with an employee serving in Turkey at any relevant date, these variations are not important, and their Lordships are, for present purposes, content to accept the summary statement of the Chief Justice with reference to them that salaries in Turkey were being paid on a gold basis, each employee receiving in Turkish currency a sum, which had Turkish gold pounds been procurable, would have enabled him to obtain these to a number equal to the bank's original figures of his month's salary.

The bank, however, in 1920 made the following notable pronouncement applicable to the staff of Constantinople and the agencies in Turkey :—

> "As from the 1st January, 1920, the gross monthly salary of each employee will be converted into pounds sterling at the rate of 110 Turkish pounds for 100 pounds

sterling and the proceeds of conversion so obtained will be paid to each employee in Ottoman Treasury notes at the average selling price of the pound sterling registered at the head office during the three months immediately preceding the current month."

This method of payment was followed for nearly a year and a half. It was superseded by a decision of May, 1921, of the management committee, arbitrarily fixing 451 piastres—a number far less than the proper number in exchange—as the number to be taken as the equivalent of the pound sterling and finally, in 1923, after the respondent had gone to Cyprus, the bank adopted a method of directly converting the Turkish gold pound, " the gross monthly salary," into paper by treating it as the equivalent to 410 piastres.

Now the action of the bank in this matter has not passed unchallenged in the Cyprus Courts. It has, in the case of *Esmerian* v. *The Ottoman Bank*, been condemned as an attempt by the bank, under cover of Article 30 of the pension regulations above set forth, to alter a fundamental term of their contracts in the case of its employees in Turkey. This may or may not be so. Upon such a question their Lordships in this case naturally express no opinion. But they draw attention to its existence in order that the meaning and effect of the judgment of the Board in *Ottoman Bank* v. *Chakarian* (*supra*) may be made clear.

That case is claimed by the bank as an authority for the proposition that the salaries of the bank's employees are no longer payable in gold. This claim seems to rest upon a complete misapprehension of the decision. The plaintiff there was an employee of the bank who, when employed at the Constantinople office, had, as he alleged, been wrongfully dismissed. His action against the bank, brought in Cyprus, was one for damages for such wrongful dismissal. For the purpose of assessing the damages, and only for that purpose, it was necessary to value the plaintiff's pension rights on the footing that he had been retired at the date when he was dismissed. He had, in fact, received on the 31st December of the year preceding his dismissal, without protest or objection on his part, his salary calculated according to the above decision of May, 1921. In these circumstances it was held by the Board that for the purpose of fixing his pension rights the plaintiff was, under Article 14 of the regulations, bound by and could not go behind that receipt—which as a receipt of 451 piastres for every pound sterling, was an essential part of the decision of May, 1921. The validity of the decision of May, 1921, was not itself in question: it was assumed to be valid: the only question under discussion was what it meant, and upon

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that question practical agreement was reached during the argument. In the judgment of the Board, therefore, delivered by Lord Thankerton, it was not necessary to do more than record the result. It follows that so far as any general question as to payment in gold is concerned, the decision is only relevant now as showing that by common consent the " gross monthly salary " of the pronouncement of January, 1920—the exact counterpart of the respondent's £tq. 45—was assumed to be, even in Turkey, a salary in Turkish gold pounds. But the case has no further application to the present, which relates to an employee of the bank serving out of Turkey: nor can it be any authority in any case, even of an employee serving in Turkey, where the validity of the decisions of May, 1921 and 1923, is not admitted or, if questioned, is not established.

In the view their Lordships take of the case it is unnecessary, they think, to deal with other questions canvassed during the argument. For the reasons given they are of opinion that the concurrent judgments of the Courts in Cyprus to the effect above stated were in the result right, and they will accordingly humbly advise His Majesty to dismiss this appeal.

Their Lordships understand that the costs have been arranged between the parties.