

Assicurazioni Generali - - - - - *Appellants*

v.

Selim Cotran - - - - - *Respondent*

FROM

THE SUPREME COURT OF PALESTINE.

JUDGMENT OF THE LORDS OF THE JUDICIAL COMMITTEE OF THE
PRIVY COUNCIL, DELIVERED THE 27TH NOVEMBER, 1931

Present at the Hearing :

LORD BLANESBURGH.

LORD DARLING.

LORD RUSSELL OF KILLOWEN.

[*Delivered by* LORD RUSSELL OF KILLOWEN.]

The question raised on this appeal is whether the moneys (10,000 francs) payable by the appellant insurance company under a policy of life insurance, are payable at the rate of exchange of gold currency or of paper francs.

The relevant facts are these :—

The policy was issued by the insurance company on the 11th December, 1909, on the application of the respondent, Selim Cotran, and his wife, Matilde Cotran, who were Ottoman subjects domiciled at Acre, Palestine. The liability of the insurance company, according to a certified translation of the policy, ran thus :—

“undertakes to pay the amount of gold francs ten thousand immediately on the death of one of the assured to the survivor, or at the latest on the 15th December, 1929, to the assured themselves if they be still living.”

The consideration for the insurance was the payment of a half-yearly premium of 257·66 francs. Mrs. Matilde Cotran died on the 7th July, 1925. At the date of her death the premium

due on the 15th June, 1925, had not been paid, but a period of thirty days' grace, which was conceded by the policy, was still current.

All the earlier premiums had been paid and accepted by the insurance company, but owing to the difficulties and restrictions which arose after Turkey had entered into the war, the form of such payments varied at different times. Although at one time the insurance company relied upon this course of business between the parties in relation to the payments of premiums, in support of their contentions before the Board, their Lordships at an early stage indicated their view that the circumstances in question could have no effect in altering the legal effect of the provisions of the policy as to the payment of the moneys thereby secured. Thereafter the point was no longer pressed, and accordingly it becomes unnecessary to consider the form in which these premiums were respectively paid.

When Mrs. Cotran died, the insurance company proposed to pay to the respondent in satisfaction of his claims under the policy the sum of 10,000 francs by cheque on Paris. The respondent thereupon commenced these proceedings in the District Court of Jerusalem, claiming payment of the equivalent in Egyptian money of 10,000 francs gold.

The insurance company claimed that by virtue of the treaty of peace with Turkey, which as from the 6th August, 1924, operated as part of the municipal law of Palestine, there was no obligation on the insurance company to pay 10,000 francs gold.

The two Judges who heard the case were divided in opinion. Judge Valero held that by virtue of the treaty the amount was not payable in francs gold. On the other hand, Judge Baraday was of opinion that the treaty, on its true interpretation, did not warrant a departure from the terms of the policy, which provided for payment in francs gold. The result of this division of opinion was that the claim of the plaintiff was dismissed. The operative part of the judgment, dated the 6th March, 1928, is in the following terms :—

“ Therefore, accordingly it is decided that the claim as regards judgment for payment in gold currency be dismissed and judgment entered in favour of the plaintiff in frs. banknotes currency at the rate of exchange at the date of death of Mrs. Cotran, the 7th July, 1925, together with legal interest as from date of the action, the 19th May, 1926, until full payment. Defendant to pay costs, expenses and LP. 3 advocates' fees.

“ Judgment open to appeal.”

On appeal by the plaintiff to the Supreme Court of Appeal of Jerusalem, the judgment was set aside and judgment was entered for the plaintiff on the 3rd April, 1929, “ for the amount of the policy moneys, 10,000 francs, less the last premium, 257 francs, at the rate of exchange for gold francs, with interest at 9 per cent. from the date of commencement of action until payment, with costs here and below.”

The grounds of this decision were (1) that the insurance company was an Austrian company at the time when the insurance was effected and remained an Austrian company throughout the war; (2) that in those circumstances the relevant provisions of the treaty had no application; and (3) that accordingly the provisions of the policy for payment of the sum of 10,000 francs gold remained unaffected.

It is from this judgment that the insurance company appeals to His Majesty in Council.

As a result of close and careful argument before the Board, at which the respondent was not represented, the grounds in support of the appeal were reduced to the single question whether the treaty operated to relieve the insurance company from the obligation to pay francs gold as provided by the policy. A consideration of this question speedily revealed the fact that it was essential for their Lordships to be supplied with proper evidence of the true meaning of the French terms used in the relevant parts of the treaty, which was signed in the French language only. It was the duty of the insurance company to have supplied this evidence in the first instance, but they had failed to do so. Their Lordships accordingly gave the insurance company the choice between two alternatives. The first was to have the appeal dismissed. The second was to adduce the necessary evidence upon the terms that the insurance company should in any event bear the costs of the appeal and should give notice to the respondent, who had not appeared before the Board, so as to enable him to appear if he thought fit. The insurance company chose the second alternative and gave full notice to the respondent, who nevertheless still abstained from appearing.

Equipped with the necessary translation, their Lordships now proceed to a consideration of the sole ground upon which it is alleged that this appeal should succeed.

In order to ascertain whether the Court of Appeal was right in its view that the treaty had no application because the insurance company was an Austrian company at the date of the policy and throughout the war, it is necessary to consider the relevant provisions of the treaty.

The treaty of peace with Turkey was signed at Lausanne on the 24th July, 1923, by the allied powers, including Italy. It came into force on the 6th August, 1924. At that date Trieste (where the head office and control of the insurance company were situate) had become Italian territory by virtue of the treaty of St. Germain, which became operative on the 10th July, 1920.

The relevant provisions of the treaty of Lausanne, viz., para. 2 of the Annex to Section II, may (according to the evidence before this Board) be accurately rendered in English thus:—

“*Paragraph 2.*

“It is agreed that life assurance policies contracted in currencies other than the Turkish pound, entered into before the 29th October, 1914, between companies possessing at this date the nationality of an allied power, and

Turkish nationals, in respect of which premiums have been paid before and after the 18th November, 1915, or even only before that date shall be settled: First, by determining the rights of the assured, in accordance with the general conditions of the policy, for the period before the 18th November, 1915, in the currency stipulated in the policy, such as is legal tender in the country from which this currency originates (*i.e.*, every amount stipulated in francs, in gold francs, or in actual francs shall be paid in French francs); secondly, for the period after the 18th November, 1915, in Turkish paper pounds—the Turkish pound being deemed to have pre-war par value.

“ If Turkish nationals whose policies were contracted in a currency other than Turkish currency show that they have continued, since the 18th November, 1915, to pay their premiums in the currency stipulated in the policies, the said policies shall be settled in this same currency, such as is legal tender in the country from which it originates, even for the period after the 18th November, 1915.

“ Turkish nationals whose policies contracted before the 29th October, 1914, in a currency other than Turkish currency with companies possessing at this date the nationality of an allied power are, owing to payment of premiums, still in force, shall have the option within a period of three months after the coming into force of the present Treaty to restore their policies for the full amount insured in the currency stipulated in their policy, such as is legal tender in the country from which it originates. For this purpose they must pay in this currency the premiums which have accrued due since the 18th November, 1915. On the other hand, the premiums actually paid by them in Turkish paper pounds since the said date shall be repaid to them in the same currency.”

The material provision is that contained in the first sentence of paragraph 2, in which the words “ at this date ” represent the French word “ *actuellement* ” and refer to the date on which the treaty was signed.

From a perusal of this sentence it seems clear to their Lordships that this provision (whatever its contents may be) applies to all life assurance policies which satisfy in other respects the detailed description, provided that the issuing company possessed the nationality of an allied power at the date of the signing of the treaty, *viz.*, the 24th July, 1923. Whatever its previous nationality may have been, as to which no enquiry need be made, the insurance company in this case undoubtedly possessed Italian nationality on that date.

Once the true meaning of the French terms is made clear, the basis of the judgment of the Court of Appeal crumbles away and the fact (if it be the fact) that the nationality of the insurance company was Austrian down to an earlier date is wholly immaterial.

Their Lordships are accordingly of opinion that the policy here in question became subject to and, on maturity, was governed by the treaty of Lausanne.

That being so, it remains to consider what the first sentence of paragraph 2 provides in relation to this policy. The payment of the 10,000 francs is one of the rights of the assured which must be determined under this clause; and whether the payment falls under the provision “ first ” or the provision “ secondly,” it is,

their Lordships think, manifest that the right to be paid francs gold has been taken away from the respondent.

It is more advantageous to the respondent that he should be paid in "French francs" rather than in Turkish paper pounds, and the insurance company is content that the former course be adopted.

Their Lordships are of opinion that the judgment of the Court of Appeal was erroneous and should be discharged, with the result that the judgment of the 6th March, 1928, will be restored, with its liability on the insurance company to pay costs as therein mentioned. As to the costs in the Court of Appeal, these should lie as they have fallen: that is to say, if the insurance company has not yet paid them, the liability to pay shall cease; if the insurance company has already paid them, there shall be no right of recoupment by set off or otherwise. As to the costs of the appeal here, since the respondent has not appeared, no order need be made in respect thereof.

The two supplemental records will be treated as incorporated with and forming part of the record before the Board.

Their Lordships will humbly advise His Majesty accordingly.

In the Privy Council.

ASSICURAZIONI GENERALI

v.

SELIM COTRAN.

DELIVERED BY LORD RUSSELL OF KILLOWEN.

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