

Privy Council Appeal No. 7 of 1937

Francesco Sforza - - - - - *Appellant*

v.

The Ottoman Bank of Nicosia - - - - - *Respondent*

FROM

THE SUPREME COURT OF CYPRUS

JUDGMENT OF THE LORDS OF THE JUDICIAL COMMITTEE
OF THE PRIVY COUNCIL, DELIVERED THE 16TH NOVEMBER, 1937

Present at the Hearing :

LORD THANKERTON.

LORD WRIGHT.

SIR GEORGE RANKIN.

[*Delivered by* LORD WRIGHT]

The appellant in this case was for about 28 years in the employment of the Imperial Ottoman Bank and of the respondents who, for all present purposes, may be regarded as identical with the Imperial Ottoman Bank. He entered into the Bank's service in June, 1903, at Constantinople. About three months later he was transferred to Cyprus, where he became a member of the permanent staff as from the 1st July, 1905, and signed a declaration dated 10th August, 1905, agreeing to be bound by the regulations governing the pension and superannuation fund of the Bank. In 1906 he was transferred to Smyrna, but in 1912 returned to Cyprus and there remained in the Bank's service (then the respondents) until he was discharged on 1st December, 1933, with an admitted right to pension. The amount of that pension has been agreed to be Ltq.35, an amount arrived at on the footing of his basic salary as on the 31st December, 1932, which is the proper date for this purpose in accordance with the terms of the regulation. The question in this case is in substance the same as that which has been discussed and decided by their Lordships in the case of the *Ottoman Bank v. Chakarian* (Appeal No. 56 of 1936). In the present case the appellant failed before the trial Judge, Fuad J. On appeal the Judges of the Supreme Court of Cyprus were equally divided. In consequence the decision of Fuad J. stood and the claim of the appellant was rejected. In view of what this Board has said in the judgment just referred to, it is unnecessary here to recapitulate in detail the terms of the pension regulations or the evidence as to Turkish

law, or as to the Turkish or Cyprus currency. It was not contested here that the proper law was that of Turkey or that it was necessary to go to Turkish law not only to see what the contract was, but also to see what was meant by the Turkish £ in which it is admitted that the basic salary was payable. It is also necessary to refer to Turkish law to ascertain those statutory changes which were effected in the currency of Turkey at the material times. As all these matters are common to the present appeal with that of the *Chakarian* case their Lordships do not think it necessary to repeat here the detailed investigation or the detailed conclusions which was there stated. Indeed, it was apparent at the hearing of this appeal, that if the decision in the *Chakarian* case was adverse to the respondent in that case and was in favour of the Bank, the same conclusion must follow *a fortiori* in the present appeal. The evidence as to the course of conduct in regard to the payments of salary from time to time was substantially the same in the present appeal as in the *Chakarian* appeal; there were, however, two circumstances peculiar to this appeal which are more in favour of the respondents and adverse to the appellant than what was found in the *Chakarian* case.

The first of these matters is that at the material date for determining the basic salary for pension purposes, namely 31st December, 1932, England, and therefore Cyprus, the currency of which was on the same footing as that of England for material purposes, had gone off the gold standard so that sterling had depreciated very substantially in terms of gold. At that date the sovereign was worth something like 30s. in sterling. While their Lordships do not think that this fact makes any difference as a matter of principle from what would have been the position if the material date for estimating pension had been a date while sterling, and therefore Cyprus, currency was still on gold, it does obviously make it much more difficult for the appellant to contend that he is entitled to claim to be paid on a gold parity. In their Lordships' judgment, the method of converting from Turkish £ into Cyprus currency according to the coefficient of 110 to 100 was no more based upon the gold value of the Turkish £ than on the gold value of the English or Cyprus £ or sovereign. The rights and obligations of the parties depended at any given time on the value of what was the legal tender denominated by the unit of account. There was no gold clause either in respect of the Turkish £ or in respect of English or Cyprus currency. Throughout, the sole question has been what is the unit, or what are the units, of account referred to in the contractual relationships between the parties and what is the currency or what are the currencies, denominated by that unit or those units of account at any given moment and what was severally the value or values at any given moment of that currency or of those currencies. That being so, if regard be had to the actual salary paid or payable at the date

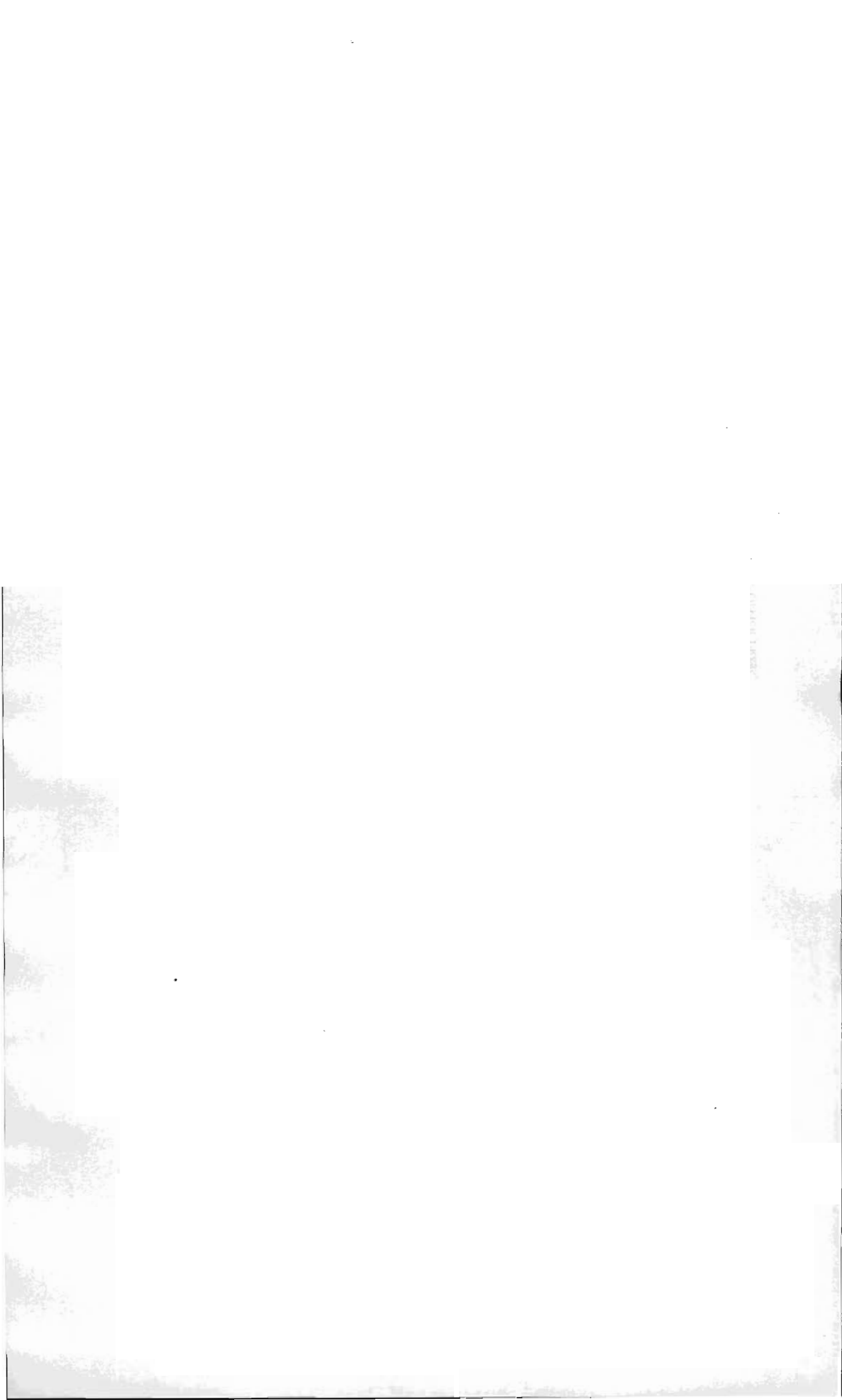
material for the determination of the amount of pension, there was no ground for saying either that the Turkish £ or the English or Cyprus £ was on a gold parity. The English or Cyprus unit of account was a factor equally divorced from a parity to gold value.

Thus the result is the same in substance in this case as in the previous appeal; the appellant here has, in their Lordships' judgment, failed to make out his claim that he is entitled to receive from the respondents a pension payable on a gold basis or payable in Turkish gold £ or their equivalent in currency constituting legal tender calculated according to the rate of exchange prevailing on the dates when the monthly instalments fell due.

There was a further point relied on as against the appellant peculiar to this case. In this case, as in the *Chakarian* case, there was no evidence, or at least no evidence accepted by the Court, of any complaint as to the practice of the respondents in paying their employees' salary from time to time. The respondents, however, relied on a letter which the appellant wrote to the respondents on the 30th July, 1924. The respondents had proposed that he should be transferred from Cyprus, where he then was, to Mersina, in Turkey, with an increase in his basic salary. He protested against this proposal for the reason which he urged, and which he supported by precise figures, that though his basic salary if he went to Mersina would be increased yet it would be of less value in fact to him because the basic salary if he went to Mersina would be paid in accordance with the Turkish régime which has been explained in the previous judgment and which involved a conversion of the Turkish basic salary into sterling and then back into Turkish currency at a fixed rate. He contended that this method would have the effect of giving him less value than he was receiving in Cyprus according to the Cyprus régime. The importance of the letter, if it is important at all, is that he fully accepts the mode in which his salary was being paid to him in Cyprus and clearly understands the method which the respondents were following in Turkey for paying their employees, and makes no claim that either method was wrong, or that he was entitled to be paid on a gold basis. Neither the Turkish nor Cyprus currency was then on gold. Their Lordships, however, do not think that that letter constituted an estoppel.

In the Supreme Court the Chief Justice was disposed to rely on that letter as a compromise within the meaning of article 79, article 1536, article 1561 and article 1562 of the *Megelle*, which at the date of the contract was still law in Cyprus. Their Lordships do not think it necessary to deal specifically with that matter because there are abundant reasons in their judgment why, apart from any conclusions based upon the *Megelle*, the construction and application of which are obscure, the appellant's claim, in their judgment,

ought to fail. They think therefore that the appeal should be dismissed, but in this appeal, as in that appeal which their Lordships have just dealt with, they do not make any order as to costs. For reasons stated in the preceding appeal, the respondents have left the question of costs to the untrammelled discretion of the Board, and owing to the somewhat exceptional circumstances of the case and the grave conflict of judicial opinion which has arisen, they will, as in the other appeal, humbly advise His Majesty that this appeal should be dismissed without any order being made as to costs.



In the Privy Council

FRANCESCO SFORZA

21.

THE OTTOMAN BANK OF NICOSIA

DELIVERED BY LORD WRIGHT

Printed by HIS MAJESTY'S STATIONERY OFFICE PRESS,
Pocock Street, S.E. 1.

1937