

The Apostolic Throne of St. Jacob (His Beatitude the
Armenian Patriarch of Jerusalem) - - - *Appellant*
v.
Saba Eff Said - - - - - *Respondent*

FROM

THE SUPREME COURT OF PALESTINE

JUDGMENT OF THE LORDS OF THE JUDICIAL COMMITTEE
OF THE PRIVY COUNCIL, DELIVERED THE 21ST NOVEMBER, 1939

[Present at the Hearing] :

VISCOUNT SANKEY
SIR LANCELOT SANDERSON
SIR PHILIP MACDONELL

[Delivered by VISCOUNT SANKEY]

This is an appeal from a judgment of the Supreme Court of Palestine sitting as a Court of Appeal dated the 14th May, 1937, affirming the judgment of the District Court of Jerusalem dated the 25th May, 1936, which ordered the appellant (hereinafter called the defendant) to pay to the respondent (hereinafter called the plaintiff) an amount in Palestine currency to be measured by the value on the date of payment of 1,000 French gold napoleons with interest and costs.

The question raised by the appeal is the extent of the defendant's liability to the plaintiff as representing the estate of Yakoub Jiries Said, deceased, on a bond dated the 16th August, 1916. The plaintiff submits, and both the Palestine Courts have so held, that the defendant was bound under the bond to pay the value on the date of repayment in Palestine currency of 1,000 French gold napoleons with interest from the 21st August, 1931. The defendant admits liability to repay the principal of the loan and interest thereon from the 16th August, 1931, as sums of Palestinian currency, that is to say:—

- (1) For the principal £P.791.282.
- (2) For the interest £P.55.385 per annum.

The bond referred to was in the following terms:—

“ The Apostolic Throne of St. Jacob, Jerusalem.
16th August, 1916.
No. 107.

French L.1,000.

DEBT BOND.

Loaned for the needs of this Apostolic Throne, from Yakoub Guries Said of Jerusalem, only (1,000) one thousand French Liras at an annual interest of 4% (four per cent.), and on condition that if he should claim the recovery of the capital on the expiration of one year, he shall notify us three months beforehand, and in confirmation whereof we gave this bond, sealed.

SEAL (Signed) The Chief of the Holy Throne,
DAVID WARTABET DERDERIAN.”

It will be observed that the bond provided for interest at the rate of 4 per cent., but by agreement between the parties the rate of interest was increased in 1918 to 6 per cent. and a year later to 7 per cent. Interest was paid from time to time either in Turkish liras, Egyptian liras, French liras, Egyptian piastres and Palestine pounds and the payments were endorsed on the back of the bond. No interest was paid after the 21st August, 1931. On the 28th October, 1935, the plaintiff commenced proceedings for the recovery of the amount due to him and by paragraph 4 of his statement of claim he alleged that, "As can be seen from the bond the liability of the defendant is expressed in French liras which expression always had and can only have the meaning of French gold napoleons, and the claim is made accordingly, the value of the claim being calculated on the basis of the rate of gold napoleons at the time of lodging the action."

The defendant denied the allegations of the plaintiff and in particular denied that the bond was given in respect of a loan in gold napoleons. The defendant also reserved the right to counter-claim for set-off against the account of the plaintiff certain over-payments which he alleged he had made.

The hearing in the District Court of Jerusalem took place on the 9th April, 1936, the plaintiff contending that the bond indicated a debt of 1,000 gold napoleons and he argued that the defendant was estopped by his own conduct from claiming that the debt was in other than gold napoleons. He drew attention to the payments made for interest and endorsed as above stated on the bond. The case was adjourned for a short time to enable the defendant to search the Turkish records for the exact text of the law enacted by the Ottoman Government during the period of the Great War substituting paper currency for gold in Turkish Dominions.

The judgment of the Court was given on the 25th May, 1936. It was brief and in the following terms:—

"The defendant is bound by the loan document and his subsequent admission by payment of interest on the basis of gold loan.

"Following decision in C.A. No. 85/32 the judgment must be given for plaintiff amount of debt, 1,000 gold napoleons at the rate of exchange upon date of payment with interest from 21st August, 1931, as agreed to date of payment provided the interest does not exceed the principal."

The defendant appealed and in his notice of appeal advanced grounds many of which were abandoned as the case proceeded. Before their Lordships only three of these grounds were relied upon. It was pointed out that neither the word "gold" nor "napoleon" was mentioned in the bond. It was denied that there was payment of interest on the basis of a gold loan and that the endorsement on the bond itself constituted such an admission; and it was contended that the only evidence available proved that interest was paid on the basis of a certain arbitrary or tariff rate which over the course of years bore no relation to the fluctuating gold exchange rate.

At the hearing in the Supreme Court on the 22nd April, 1937, the defendant expressly admitted, apparently for the first time, that he was liable to pay at tariff rate, and subsequently before their Lordships he admitted his liability to repay the principal of the loan and interest thereon from the 16th August, 1931, as sums of Palestinian currency, (1) for principal £P.791.282 and (2) for interest £P.55.385 per annum.

Their Lordships were referred in an appendix to the case for the appellant to various extracts from the Turkish, Egyptian and Palestinian currency laws, decrees and ordinances, but it is not necessary to set them out at length. By article 1 of a draft decree concerning Turkish coinage in the year 1296 (1881) which was subsequently passed by the Chamber of Deputies, it is provided that the Turkish monetary unit is the gold pound of 100 piastres. By a Turkish ordinance of the 22nd/24th August, 1914, it was provided that the Ottoman Bank would be exonerated of its obligation to redeem bank notes in gold for as long a period as that law would be in force. By a decree relating to the monetary system of Egypt, dated the 18th October, 1916, it was provided in article 1 that the monetary unit of Egypt is the Egyptian pound. The Egyptian pound is divided into 100 piastres. After the occupation of Palestine by the Allies a notice was issued on the 23rd November, 1917, making Egyptian coins and bank notes legal tender. On the 18th January, 1918, a notice was issued relating to acceptance of certain coins for purposes of receipts and payments and it was provided as follows:—

“ The following are the official rates of conversion into Egyptian piastres of the coins mentioned below. On the basis of these rates these coins may be accepted for purposes of receipt and payment in addition to currency.

“ (1) Coinage other than Turkish:—

“ In addition to Egyptian currency the following may also be accepted for purposes of receipts and payments in the occupied enemy country. Gold at the following exchange: French 20 francs, 77.15 P.T. (Egyptian).

“ (2) Turkish coins:—

“ £ Turkish (Gold)—87.75 P.T. (Egyptian).”

By a notice on the 18th January, 1918, from the acting administrator of occupied enemy territory, the public was reminded that the Egyptian bank note is worth exactly its face value in Egyptian gold, silver or nickel currency and that on the basis of the above rate of P.T. 87.75 for the pound Turkish gold, the value of the 100 P.T. Egyptian note must be considered as 144 Turkish piastres gold.

The payments of interest endorsed upon the bond are as follows:

The first two endorsements (the only endorsements that relate to the period prior to the British occupation) show that interest for the first year, i.e., from August, 1916-August, 1917, was paid in Turkish liras. The second endorsement clearly means “ 20 French liras in its equivalent

of 17·5 Turkish liras," as in the first endorsement. For the year August, 1917-August, 1918, interest was paid in Egyptian liras at the tariff rate for gold coins. For the year August, 1918-August, 1919, the interest was actually paid in French liras. For the year August, 1919-August, 1920, interest was again paid at the tariff rate for gold napoleons. For the year August, 1920-August, 1921, interest was paid similarly, and again for the year August, 1921-August 1922. The payments were continued at the tariff rate for the years 1922-3, 1923-4, 1924-5, 1925-6, 1926-7, 1927-8, in each case the payment being 5,400 Egyptian piastres, being the equivalent of 70 gold napoleons at the tariff rate of 77·15 Egyptian piastres per gold napoleon. The remaining three endorsements represent similar payments for the years 1928-9, 1929-30, and 1930-1, the payment being made in Palestine pounds, at the same tariff rate, with the necessary adjustment between the gold value of the Palestine pound and the Egyptian pound.

The judgment of the Supreme Court was given on the 14th May, 1937. It states:—

"The case came before the District Court on 9th April, 1936. The plaintiff's case was that the defendant was estopped from saying the transaction was not gold by the payments which were made and accepted on account of interest, these showing that the parties must have treated the loan as gold. This was done by showing that the payment of interest was calculated at the tariff rate under a public notice dated 12th December, 1918, on the basis that the interest was payable on a gold loan.

"The defendant argued that the transaction could not have been gold as there was then no gold coin in circulation and that if it was in gold the transaction was void—gold transactions being forbidden by law. He went on to say there was a definite issue of fact between the parties as to whether the transaction was gold."

And the learned Chief Justice proceeded to say:—

"I think that the fact that interest had been paid for a number of years upon a basis compatible with the loan being gold cast the onus of proof upon the defendant and it is clear that he made no effort by the production of his books or otherwise to discharge that onus, and although I do not think, upon the evidence, that the defendant was estopped from denying that the loan was gold, I think the District Court was entitled, in the absence of any evidence by the defendant, to hold that it was gold. This disposes of the first point raised for the appellant before us by Abcarius Bey, i.e., that the onus was on the respondent (plaintiff) to prove that he gave gold."

Learned counsel for the defendant argued before their Lordships that the loan was repayable in any currency legal at the time of repayment. He contended that the two questions for determination were (1) did the bond by itself show that the contract was, to put it briefly, a gold or a gold value contract; (2) did the payment of interest show that the bond was a gold or a money contract? Several cases were referred to including *Adelaide Electric Supply Company, Limited v. Prudential Assurance Company, Limited* [1934] A.C. 122, *Feist v. Société Intercommunale Belge D'Electricité* [1934] A.C. 161, and *Ottoman Bank of Nicosia v. Chakarian* [1938] A.C. 260, but none of these

authorities was in point in the present case for reasons which will appear later.

In the view of their Lordships the judgment of the Supreme Court was right upon the materials which were before it. With regard to the bond the defendant submitted that the French lira or napoleon was a Turkish unit of account, that there was no gold clause in the bond or any indication in it that repayment was required to be in gold, or in anything else other than legal currency.

If the bond stood alone and if attention was directed to the bond only it might have been successfully contended that the contract was a currency contract as distinguished from a gold one. But the bond did not stand alone. The payments of interest were sometimes in Egyptian liras at the tariff rate for gold coins, sometimes actually in French liras, sometimes in Egyptian piastres equivalent in amount and value to gold napoleons, sometimes in Palestine pounds with the necessary adjustment between the gold value of the Palestine pound and the Egyptian pound. These were admissions by the defendant by which he was bound.

The legal effect of admissions in Palestine is to be found in the Turkish Code (the *Mejelle*) which provides in article 79 that a person is bound by his own admission and in article 1588 that no person may validly retract an admission made with regard to private rights.

It is clear, as was held by both of the Courts below, that these payments of interest show that the defendant by his conduct over a number of years admitted that the loan was one of 1,000 gold napoleons and consequently he was prevented by such admissions from claiming that he could discharge his liability other than by the payment of the amount claimed.

In order to counteract the effect of these admissions the defendant contended before their Lordships that the interest had been paid not on the basis of the gold rate but on that of a tariff rate which he alleged had borne no relation over the course of years to the gold rate. He further alleged that the tariff rate for gold coins was not the gold exchange rate. Had the defendant been able to substantiate these points or had he proved them in the District Court he might have been in a position to displace the inference drawn in both Courts from the payment of interest, but the difficulty in his way in the present appeal is that in the Court of first instance he made no attempt either by the production of his books or otherwise to displace the only inference which could be drawn from a proper consideration of the payments of interest endorsed upon the bond. Those payments indicated that the basis of the bond was compatible, and compatible only, with the loan being gold. Consequently the Palestine Courts were entitled on the evidence which was before them and, indeed, bound, to hold that the loan was a gold one.

In the result their Lordships will humbly advise His Majesty to dismiss this appeal, and order the defendant to pay the costs of the appeal.

In the Privy Council

THE APOSTOLIC THRONE OF
ST. JACOB (HIS BEATITUDE THE
ARMENIAN PATRIARCH OF
JERUSALEM)

v.

SABA EFF SAID

DELIVERED BY VISCOUNT SANKEY

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