

1932.
Nov. 26.

REX
v.
SUTTON.

has been so instructed seems to my mind to indicate clearly that the Home authorities are doubtful whether the governor of a prison in England would obey an order of this Court unless it were reinforced by Executive action in England.

For the reason given above I am of opinion that an order granting bail to a prisoner outside the jurisdiction is an order which this Court has no power to make, and an order which the authority holding the prisoner is under no obligation to obey. I, therefore, think that the application should be refused.

FUAD, J.: I concur in the views expressed in the judgment of the Chief Justice.

Application for bail refused.

1933.
April 12.

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

OTTOMAN BANK *Appellant,*

v.

ANGELOS DASCALOPOULOS (No. 1) *Respondent.*

Practice—Appeal to Privy Council—Courts of Justice Order, 1927, Clause 41—Appeal to Privy Council Order, 1927, Clause 3—Appeal indirectly involving a claim respecting property or civil right of the value of £300.

Respondent obtained judgment against the appellant for a monthly pension of £26.3s.8cp. gold. The appellant admitted liability to pay respondent a pension of £26.3s.8cp. paper currency, the difference in dispute amounting to £11.4s.6½cp. a month. At the date of the application for leave to appeal the amount due by appellant under judgment was £145. An affidavit was put in by appellant stating that, if its obligation was to pay salaries and pensions in gold as ordered by the judgment, it would involve the bank in an increased annual expenditure of about £4,500. Neither in the affidavit or elsewhere did the appellant give any undertaking as regards other claims for the payment of salaries and pensions on a gold basis that he would be bound by the decision in the present case.

Held: (1) that the matter in dispute was the basis upon which pensions and salaries were payable, a purely domestic question between the bank and its servants, and, consequently, not a matter of great or public importance;

(2) that, as payment of salaries and pensions upon a gold basis would involve appellant in a substantial increased annual expenditure, the appeal indirectly involved a question respecting property or a civil right of the value of £300 or upwards;

(3) The proper measure of value for determining the right of appeal is the amount which has been recovered in the action and against which the appeal could be brought ;

(4) A monthly pension may not be capitalized so as to bring the judgment up to the appealable amount ;

(5) Clause 3 of the appeal to Privy Council Order, 1927, although purporting only to regulate procedure, must be construed as conferring a right of appeal in additional cases not specified in Clause 41 of the Cyprus Courts of Justice Order, 1927 ;

1933.
April 12.
OTTOMAN
BANK
and
DASCALO-
POULOS
(No. 1).

Clerides for appellant :

First as to the appeal of right under Clause 3 (a) the difference between what the bank is paying monthly and what the judgment orders is £134 per year. Actual difference up to the present is £145. The amount involved is the amount of pension to which respondent is entitled ; that amount exceeds £300. It is stated in Mr. Jones's affidavit that the bank has nineteen pensioners in Cyprus.

As to Clause 3 (b) I submit this is a matter of great general importance which ought to be submitted to His Majesty in Council for decision : *St. George, Jamaica v. May* (1).

Triantafyllides for respondent :

Appellant alleges matter in dispute involves the right of respondent to a pension which exceeds £300. The value is to be taken as at the date of the application for leave to appeal : Bentwich's *Privy Council Practice*, p. 146. *Gardiner v. McCallum* (2), *Bank N.S.W. v. William Owston* (3).

Neither the application itself nor the affidavit in support brings the application within Rule 3 (b). The application alleges that the matter in dispute is a question of "great importance," whereas to come within the Rule it must be of "great general or public importance." Submit that the question is only of importance to the bank itself and its employees. *English and Empire Digest*, Vol. 17, pp. 482 and 483, paragraph 466. Present case raises no new principle of law, *Allen v. Pratt* (4) ; but only involves interpretation of a contract. The present case does not affect other employees and pensioners of the bank, unless there is an agreement to abide the judgment appealed from : 17 *English and Empire Digest*, p. 487 ; Bentwich, p. 143.

Clerides replied.

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- (1) 12 R.R. 65.
(2) (1876) 2 V.L.R. 128.
(3) (1879) 4 App. Cas. 270 ; 48 L.J. (P.C.) 25.
(4) 13 A.C. 780.

1933.
April 20.
—
OTTOMAN
BANK
v.
DASCALO-
POULOS
(No. 1).

JUDGMENT:—

STRONGE, C.J.: This is an application for leave to appeal to the Privy Council from a final judgment of the Supreme Court affirming a judgment of the trial Court whereby it was declared that the plaintiff is entitled to—

- (1) A monthly pension of a sum equal to 28.80 Turkish gold pounds to be calculated in Cyprus currency according to the rate of exchange prevailing at the date when each monthly instalment of pension becomes due ;
- (2) The monthly instalment of plaintiff's pension which fell due on the 31st January, 1932, *i.e.*, 64 per cent. of 45 L.T. gold when translated into Cyprus currency and calculated according to the rate of exchange prevailing on 31st January, 1932.

In Cyprus appeals to the Privy Council are dealt with by Clause 41 of the Imperial "Cyprus Courts of Justice Order in Council" of the 26th May, 1927, and by the Imperial "Cyprus (Appeal to Privy Council) Order in Council" of the 27th June, 1927.

Clause 41 of the earlier Order provides that an appeal shall lie to His Majesty in Council in civil matters where the amount of value in dispute *exceeds* £300. The final sentence of this clause states that every appeal shall be brought within such time and in such manner as may be prescribed by any rules of procedure made by His Majesty in Council. Judging from its recitals it would appear that the later Order of 27th June, 1927, was intended to implement this concluding sentence of Clause 41 by prescribing rules of procedure regulating appeals to the Privy Council. The later Order does not, however, confine itself to laying down such rules of procedure for by Clause 3 it not only travels over the ground already covered by Clause 41 of the earlier Order by prescribing the cases in which an appeal shall lie but it also, by Sub-clause (b) of that clause prescribes that leave to appeal may be granted in cases not mentioned at all in Clause 41 of the earlier Order, *viz.*, cases in which the question involved in the appeal is one which in the opinion of the Court by reason of its great general or public importance or otherwise ought to be submitted to His Majesty in Council for decision.

I do not think there is room for doubt that although the later Order in Council purports to be an Order merely regulating procedure, it must be construed as effective to confer a right of appeal in these additional cases which were not specified in Clause 41 of the earlier Order. It would, I think, be a distinct improvement if Clause 3 of the later Order was amoted and inserted in the earlier Order in place of the existing Clause 41. This would also have the effect of doing away with the inconsistency at present existing

in regard to the appealable value stated in the two clauses, Clause 41 giving a right of appeal where the value exceeds £300 and Clause 3 giving such a right where the value is £300 or over.

So far as the present application is concerned it can only succeed if either—

- (1) the matter in dispute on the appeal amounts to or is of the value of £300 or upwards ; or
- (2) the appeal involves directly or indirectly some claim or question to or respecting property or some civil right of the value of £300 or upwards ; or
- (3) the question involved in the appeal is, in the Court's opinion, one which by reason of its great general or public importance or otherwise ought to be submitted to His Majesty in Council.

If the application comes under either head (1) or (2) the applicant is entitled to appeal as of right, whereas leave to appeal under (3) is a matter in the discretion of the Court.

As to (1), apart from the claim that certain allowances termed indemnities should be considered pensionable—a claim which has been disallowed by the trial Court and on appeal—both parties agree that the plaintiff's pension amounted to 28.80 Turkish pounds monthly, being 64 per cent. of the salary paid to him on 31st December, 1930. The bone of contention is whether these 28.80 Turkish pounds are Turkish gold pounds or Turkish paper pounds, or in other words, whether the plaintiff is entitled to such a sum by way of pension in Cyprus money as would enable him to purchase 28.80 Turkish *gold* pounds each month. If so, he is entitled to £11. 4s. 6½cp. per month in excess of the pension of £26. 3s. 8cp. per month admitted by the defendant Bank and paid month by month to him since he retired.

In *Allan v. Pratt* (1), Lord Selborne says that the proper measure of value for determining the question of the right of appeal is "the amount which has been recovered in the action and against which the appeal could be brought." A sentence or so further on in the same case he says : "The judgment is to be looked at as it affects the interests of the party who is prejudiced by it and who seeks to relieve himself from it by appeal." From the date of plaintiff's retirement to the present time, the difference between the amount of pension claimed by him and the amount admitted and paid by the defendant bank admittedly totals £145, which sum, consequently, represents the amount recovered in the action down to the date of this application and in respect of which, as the appealable value stands at £300, no appeal could *prima facie* be taken. It was pressed upon us, however, that the amount recovered

1933.
April 20.
—
OTTOMAN
BANK
v.
DASCALO-
POULOS.
(No. 1).

(1) (1888) 13 A.C. 780 & 781.

1933.
 April 20.
 OTTOMAN
 BANK
 v.
 DASCALO-
 POULOS
 (No. 1).

in the action is not £145 but the capitalized value (having regard to the plaintiff's probable expectation of life) of £11. 4s. 6½cp., being the amount per month to which, as the result of the Court's decision, the plaintiff becomes entitled in excess of the £26. 3s. 8cp. admitted by the bank, and that this capitalized value would exceed £300. I do not agree with this contention. Suppose, for example, the plaintiff were to die a month hence, his right to pension would determine with his death, and in that event the amount recovered in the action would only amount to £145 plus £11. 4s. 6½cp. The amount recovered in the action is, in my opinion, an amount the aggregate of which can only be finally ascertained at the date of the plaintiff's death, and this being an event the date of which is beyond human ken the total amount recovered may be less or may be more than £300. At the time of this application it is less than that figure, and there is no certainty that it will ever exceed it. In any event no evidence is before this Court of the expectation of human life at the age attained by the plaintiff, nor have we before us any medical evidence as to his physical condition and freedom from disease. The fact that the recurring monthly payments of the £11. 4s. 6½cp. may, in the course of time, if the plaintiff lives, cause the amount recovered to exceed £300 does not, therefore, in my opinion entitle the applicants to succeed on the ground that the matter in dispute amounts to the value of £300 or upwards.

As to the interpretation to be given to the words in (3)—“great general or public importance”—it is impossible to lay down any general rule which will serve as a guide for determination in any given case of the question of what constitutes a question of great general or public importance. Whether the question involved in an appeal is so or not must clearly depend on the circumstances of each individual case.

The terms “general” and “public” appear to me to be practically synonymous, “public” being possibly a word of slightly wider import than “general.” To say a thing is of *general* importance seems to me to differ very slightly, if at all, from saying it is of *public* importance and *vice versa*. “General” in this sense of “public” is not unusual, *e.g.*, in such phrases as “the general good.” Thus, Brutus says:

“What is it that you would impart to me?

If it be aught toward the general good

Set honour in one eye,” etc., etc.,

c.f. Hamlet's “The play I remember pleased not the million;

't was caviare to the general.”

So far as one may venture to generalize at all, I should be inclined to say that a question of great general or public importance means one which of consequence to a consider-

able number of the community. The instant case is one of a dispute between a financial concern and one of its employees as to the basis on which the latter's pension is payable—a question quite possibly of importance to the bank and certainly one of importance, indeed I may say of great importance to the employee. Even if it be assumed that its importance is not immediately confined to the parties to the present case but extends to numerous other employees of the bank, I still do not think it can be said that a question between a bank and its employees as to the proper basis on which salaries and pensions should be paid is one of great importance to any section of the community other than that limited portion of it which is in the bank's employment; it is a purely domestic question between the bank and its servants and, consequently, in my opinion, does not amount to a question of great general or public importance.

Remains the question whether the appeal to the Privy Council involves directly or indirectly a question to or respecting property or a civil right amounting to or of the value of £300. In view of the circumstances of the present case this appears to me to be a question of somewhat greater difficulty than the two just dealt with. Had the defendant bank either by affidavit or at the hearing of the application given an undertaking as regards the claims by the various pensioners mentioned in paragraph 6 of Mr. Jones's affidavit that they would be bound by the result of this case and would not raise any defence to those claims other than their right to pay pensions on a paper basis as asserted in this action, our task would, I think, have been considerably simplified as in that case there could be little room for doubt that the appeal would involve indirectly a question as to property or a civil right of the value of £300. The bank has not, however, seen fit to adopt that course and must, consequently, be regarded as at liberty in regard to those claims to rely on grounds of defence not raised at all in the present action or grounds which, though raised, were not, owing to the particular circumstances of the case, effectual.

Considerations, however, more extensive in character than these claims by the eight pensioners have to be discussed. Broadly speaking the bank's position in this litigation is that it denies all liability to pay on a gold basis the plaintiff's pension or the pensions of its employees in general, on the ground that it has a legal right to pay them on a paper basis. The decision given in the plaintiff's favour in this action wholly negatives any such right on the part of the bank and must as its natural consequence, if it remains effective, involve the bank in increased annual expenditure on salaries and pensions—an increase which

1933.
April 20.

OTTOMAN
BANK
v.
DASCALO-
FOULOS'
(No. 1).

1933.
April 20.

OTTOMAN
BANK
v.
DASCALO-
FOULOS
(No. 1).

it appears from paragraph 9 and 10 of Mr. Jones's affidavit—will amount annually in the case of its employees in Cyprus to £3,681 on salaries, and £1,981 on pensions.

Now, even assuming that the bank by availing itself of defences, other than the mere assertion of its right to pay on a paper basis, succeeds in avoiding as much as nine-tenths (a very large proportion) of this extra annual expenditure, the decision in this case will nevertheless still entail an extra annual expenditure in Cyprus of over £500. Viewing the matter from this standpoint I have come to the conclusion that this appeal does indirectly involve a question respecting property or a civil right of the value of £300 or upwards and that this application for leave to appeal should, therefore, be granted as of right.

The order of this application, therefore, will be—

- (a) conditional leave to appeal granted ;
- (b) defendant (appellant) to give security for costs and for the due prosecution of the appeal by a bond for £500 to be signed by the defendant bank's regional Manager for Cyprus within 14 days from this date ;
- (c) the record of the proceedings to be prepared and despatched to England within 3 months from this date ;
- (d) execution of the judgment suspended pending the determination of the appeal on condition that the defendant (appellant) continues to pay the plaintiff the sum of £26. 3s. 8cp. monthly representing that amount of plaintiff's pension which is not in dispute.

THOMAS, J. : The second ground of appellant's application is that the question involved in the appeal is of great importance. The only question involved in this appeal is the interpretation of a contract between the appellant bank and its employees as to the payment of pensions and salaries. The issue is entirely one of fact which has been found by the trial Court and by the unanimous decision of the appellate Court against the appellant. No point of law arises for determination on this appeal, nor can the question of fact in dispute be said to raise any question which is either of great general importance or great public importance such as should be submitted to His Majesty in Council for determination as provided by Rule 3 (b) of the Cyprus (Appeal to the Privy Council) Order in Council, 1927. I, therefore, think that the application fails on this ground.

The first ground of the application is that the matter in dispute involves the civil right of respondent to a pension of £300 in value. The appellant's application is not correct in this respect for the matter in dispute is not the respondent's pension, the liability to pay which is admitted, but only

the difference in value depending on whether it is payable in pounds gold or pounds paper. According to appellant's affidavit this difference amounts to £134. 14s. 6cp. a year, and the amount due at present under the judgment is £145.

To discover whether this appeal involves directly or indirectly any question to property of £300 in value it is necessary to see to what extent the appellant is prejudiced by the judgment. His liability at present is £145. No authority has been cited to show that a sum due annually may be capitalized so as to give a right of appeal where the sum due is less than the appealable amount. Appellant contends that, if its obligation is to pay salaries and pensions on a gold basis, an additional burden of over £5,000 a year will be imposed upon the bank.

If appellant had given an undertaking to be bound by the final decision of the present case his right of appeal would be undoubted. Does appellant's alleged increased liability in the future flow as a natural result from the present judgment? The natural consequence of the judgment is not an increased liability upon the appellant, but the possibility of a number of claims being made for increased pensions and salaries. Whether such claims will result in imposing further liabilities upon the appellant depends upon a variety of highly uncertain events which cannot be ascertained at present, such for example as whether sterling remains off the gold standard, and whether the appellant will have a good defence to other claims. Appellant's liability in the future would, consequently, not arise from the present case but from problematical events having no connection with the present appeal. It is for this reason that upon a very strict reading of Rule 3 (a) I do not think the heavy liabilities in the future contemplated by the appellant can be said to flow from the present case. But taking a wider view of the Rule, I am not disposed to dissent from the opinions of the other members of this Court that the appellant should be allowed conditional leave to appeal.

SERTSIOS, J. : I agree that leave to appeal to the Privy Council should be granted upon the conditions referred to in the written judgment delivered by the learned Chief Justice.

Conditional leave to appeal granted.

1933.
April 20.
—
OTTOMAN
BANK
v.
DASCALO-
POULOS
(No. 1).