[VASSILIADES, P., JOSEPHIDES, STAVRINIDES, JJ.]

SYNERGATIKOS ORGANISMOS DIATHESEOS AMPELOURGIKON PROIONTON LTD.,

Appellants-Defendants,

v.

COSTAS KORALLIS,

Respondent-Plaintiff.

(*Civil Appeal No.* 4740).

Master and Servant—Wrongful dismissal—Appointment by Co-operative Society of Technical Manager "Permanently" ("μονίμως")—Whether a working life appointment or an appointment subject to termination on reasonable notice—The word "μονίμως" must be construed in the light of its context, the service history of the respondent and the duration of his previous contracts of service over a period of 11 *years with the appellant Society—Thus, the word "μονίμως" held to mean during the respondent's useful working life.*

Wrongful dismissal—Contract of service—Construction—Meaning and effect of the expression: "Mr. K. (the respondent) is appointed permanently" ("μονίμως")—See supra.

Wrongful dismissal—Damages—Assessment—Principles applicable—Loss of earnings—In assessing such loss a deduction has to be made in respect of income tax which would have been payable under the law in respect of such earnings.

Income tax—Damages for wrongful dismissal in respect of loss of professional earnings—Whether income tax must be taken into account in assessing such loss—See supra.

Co-operative Societies Rules—Rule 51*—Construction of—Not applicable to persons appointed to perform duties of the nature of those of the respondent, that is, as a Technical Manager of the whole business of the appellant Society—Applicable only to "clerks or employees" appointed under the said Rule* 51*—Whether rule* 51 *is or is not* ultra vires *the Co-operative Societies Law, Cap.* 114, *left open.*

Contract of service—Construction—See supra.

Words and Phrases—"Clerk or employee" in rule 51 of the Co-operative Societies Rules—"Appointed" permanently "μονίμως" in a contract of service etc. etc.

In this wrongful dismissal case the trial Court awarded to the plaintiff (respondent) £5,953 damages in respect of loss of his salaries and other emoluments during a period of 28 months *viz.* from the date of his dismissal on July 1, 1965 up to November 1967, when he completed the age of 68, held to be the end of his useful working life. The interesting feature of this case is the crucial clause in the relevant resolution of the appellant Society—such clause deemed to form part of the contract of service—whereby the Society decided to appoint the plaintiff (respondent) "μονίμως" ("permanently") as the Technical Manager of its whole business all over Cyprus. The trial Court—upheld on this point by the Supreme Court on appeal—accepting the submission made by counsel for the plaintiff (respondent), took the view that the said clause, correctly construed in its context etc. (*infra*), means and creates an appointment for his useful working life, and not, as suggested by counsel for the defendant (appellant) Society, an appointment for an indefinite period determinable on reasonable notice. The Supreme Court, however, applying the principle laid down in the *Gourley's* case (*infra*), reduced the damages awarded as aforesaid by an amount of £537, representing income tax which would have been payable on the P.A.Y.E. basis in respect of the aforesaid professional earnings. The salient facts of the case are as follows :—

The respondent is a chemist and wine specialist, born in November, 1899. Prior to his employment by the appellant Society in 1951, he was employed between the years 1929–1951 by one of the leading wine and spirits factories in Cyprus, K.E.O. Ltd., as a chemist and factory manager. In the year 1951, at the age of 52, the appellant was engaged for the first time by the appellant Society as a technical manager in charge of all the factories of the Society in Cyprus, for a period of five years, at a salary of £1,800 a year plus cost of-living allowance and certain other benefits. This was done by a contract in writing dated the 23rd March, 1951. On April 26, 1956, the original contract was substituted by a similar contract for a period of three years ending on the 22nd March, 1959. On February 12, 1959, the contract was renewed for a further period of three years ending on March 22, 1962.

Finally, we have the last appointment of the respondent, which was made on the 15th March, 1962, and which is the subject of the present appeal. On that day at a joint meeting of the Society's Committee and Council of Inspection, in the presence of the respondent, a resolution was taken whereby the Society, after expressing to the respondent their appreciation for his valuable services to the Society, decided to re-appoint him " permanently " (" μονίμως ") as from March 23, 1962 at a salary of £150 monthly plus cost-of-living allowance similar to the scheme applied by the government.

On May 17, 1965, the appellant Society sent a letter to the respondent terminating his employment with effect from the 30th June, 1965. The reason given in the letter for such termination was that the respondent had been unable to perform his duties as from April 3, 1965, owing to a serious heart disease which would not allow him to resume work.

The trial Court, (*a*) finding that the reason invoked by the Society for the dismissal of the plaintiff (now respondent) was unfounded, (*b*) holding that rule 51 of the Co-operative Societies Rules (see the full text *post* in the judgment) was *ultra vires* the Co-operative Societies Law, Cap. 114, and further holding (*c*) that the aforesaid resolution of March 15, 1962, of the Society (*supra*), whereby the plaintiff (respondent) was re-appointed " permanently ", created an appointment for his working life—(held to end when he would complete the age of 68 by November, 1967) and not an indefinite appointment determinable on reasonable notice, found that the respondent's dismissal was wrongful and awarded him the sum of £5,953 damages. This sum was made up of 28 lost monthly salaries (and other emoluments) as from the date of the dismissal (1st July 1965) up to the closing in November, 1967, of respondent's working life (*supra*). It is to be noted here that at the conclusion of the hearing before the trial Court this period of 28 months had already elapsed, so there could be no question of any contingency in this respect.

It is against this judgment that defendant Society took the present appeal. It was argued by counsel on its behalf that :—

(1) Under rule 51 of the Co-operative Societies Rules (see Subsidiary Legislation of Cyprus, consolidated edition 1954, Volume 1, at p. 433) the respondent, notwithstanding his contract of service, could not in law but hold office " during

the pleasure of the committee" (see the full text of rule 51, quoted *post* in the judgment) and that, consequently the termination of his appointment was not a wrongful one ;

(2) In any event, the trial Court erroneously construed the meaning and effect of the said resolution of March 15, 1962 (*supra*) ; such resolution, counsel went on, to the effect that the respondent was re-appointed "permanently" ("μονίμως") did not create an appointment for the respondent's working life but it was an indefinite appointment determinable on reasonable notice as the one given by the appellants in this case on May 17, 1965 (*supra*) ; the terms of the resolution, counsel submitted, were not such as to render inevitable the conclusion that a life employment was intended. In support of his submission, counsel referred to : Halsbury's Laws of England, 3rd ed., Vol. 25, p. 490, paragraph 946 ; *McClelland* v. *Northern Ireland General Health Services Board* [1957] 2 All E.R. 129, at pp. 130G, 140 A–C, 142D, 133 "I" and 136 B–C ; and *Wash* v. *The Dublin Health Authority* [1962] I.L.T. 82 (before Budd, J.) ;

(3) *Regarding the quantum of damages :* It was argued by counsel for the appellant, *inter alia*, that as the respondent would have to pay income tax on his salary on the P.A.Y.E. basis, the trial Court ought to make the appropriate deductions on the principle laid down in the case *British Transport Commission* v. *Gourley* [1956] A.C. 185 and other cases (*infra*).

Rejecting submissions under (1) and (2) above, but accepting submission under (3) (*supra*) and reducing accordingly by £537 the amount of the damages awarded by the trial Court to the net amount of £5,450, the Supreme Court :—

Held, (1). (*After quoting rule 51 of the Co-operative Societies Rules, relied on by counsel for the appellant*, supra) : This point was taken also before the trial Court who held that rule 51 was *ultra vires* the Co-operative Societies Law, Cap. 114. However, we are of the view that for the purposes of the present case it is not to decide whether rule 51 is *ultra vires* or not. This rule, when read as a whole, applied only to "clerks and employees", including labourers ; and rule 51 (2) which provides that a "clerk or employee" shall hold office "during the pleasure of the committee", applies only to that category of servants who are "appointed under this rule". We are further of the view that rule 51 has no

application to persons appointed to perform duties of the nature of those of the respondent, that is, as a Technical Manager of the whole business of the Society.

(2) *As to the second point taken by counsel for the appellant Society* (see *supra*) :—

(*a*) Counsel says that the word " μονίμως " (" permanently ") in the resolution in question of March 15, 1962 (*supra*), does not mean permanently, but it means an agreement which could be determined at any time on reasonable notice.

We agree with the trial Court that the document means quite clearly that the respondent was appointed (or re-appointed) for as long as he would perform his duties.

(*b*) The word " μονίμως " must be construed in the light of its context, the service history of the respondent and the duration of his previous contracts over a period of 11 years.

(*c*) We are in agreement with the view expressed by the trial Court that it would indeed be very strange to hold in this case that in one and the same resolution the appellant Society expressed its appreciation for the respondent's valuable services to the Society and then proceeded to appoint him " permanently ", intending the word to mean that his appointment would be determinable at any time on reasonable notice, a condition which would be less advantageous than the one contained in his previous contract, which was for a duration of three years.

(*d*) The law on this point is summarised in Halsbury's Laws of England, 3rd ed., Vol. 25, p. 490, paragraph 946 which reads as follows :

" 946. *Meaning of permanent employment.* (See this passage quoted in full *post* in the judgment). This statement of the law is based on *McClelland's case* (*supra*) ; and *Salt* v. *Power Plant Co. Ltd.* [1936] 3 All E.R. 322, C.A.

(*e*) To sum up on this point : Having regard to the service history of the respondent with the appellant Society, we construe the expression " μονίμως " (" permanently ") in the said resolution of the appellant Society of March 15, 1962, as meaning during the respondent's useful working life. Construing the said resolution reasonably we are of the view that it was *inevitable* for the trial Court

to have reached the conclusion that the respondent's appointment was a life appointment, and, therefore, not subject to termination on reasonable notice.

(*f*) Here on the evidence adduced, he was able to work up to the age of 68. This was the finding of the trial Court which, rightly, we think, was not challenged on appeal.

(*g*) In the circumstances, we agree with the trial Court that the plaintiff's (respondent's) dismissal was wrongful and that the appellant Society is liable to pay him damages for breach of contract.

(3) *As to the quantum of damages :*

(*a*) The trial Court found that the plaintiff took all reasonable steps to mitigate damages and that all his efforts proved unsuccessful.

(*b*) The finding of the trial Court that the respondent was in a position to work up to the age of 68 *i.e.* up to November 1, 1967, was not challenged on appeal. Now, the hearing of the case was concluded in January, 1968, and judgment was delivered in May, 1968. The respondent, thus, having completed the age of 68 in November, 1967, that is, before the conclusion of the hearing of the case in the trial Court, it follows that the trial Court were right in assessing the damages to the amount of £5,953 which represents the salaries and other emoluments of the respondent for the 28 months period from July 1, 1965, when respondent was dismissed to November 1, 1967, when he completed the age of 68, without making any deduction for contingencies.

(*c*) But we are in agreement with counsel for the appellant Society that a deduction ought to have been made in respect of income tax which, under the law, would have been deducted on the P.A.Y.E. basis from the respondent's salary monthly before the payment of such salary to him (See *British Transport Commission* v. *Gourley* [1956] A.C. 185 ; *Parry* v. *Cleaver* [1969] 1 All E.R. 555 (H.L.) at p. 557 ; *Beach* v. *Reed Corrugated Cases Ltd.* [1956] 2 All E.R. 652 ; *Parsons* v. *B.N.M. Laboratories Ltd.* [1964] 1 Q.B. 95, C.A.).

(*d*) Consequently, relying on the above principle, we reduce the amount of damages for wrongful dismissal awarded

to the respondent by £537 in respect of P.A.Y.E. income tax (approximately) as follows :

		£
(*a*)	in respect of the period 1.7.65–31.12.65 ..	65
(*b*)	in respect of the year 1966	283
(*c*)	in respect of the period 1.1.67–30.10.67 ..	189
		£537

Appeal allowed in part.

Cases referred to :

McClelland v. *Northern Ireland General Health Services Board* [1957] 2 All E.R. 129, at pp. 130G, 140 A–C, 142D, 133 "I" and 136 B–C ;

Walsh v. *The Dublin Health Authority* [1962] I.L.T. 82, (before Budd, J.) ;

Salt v. *Power Plant Co. Ltd.* [1936] 3 All E.R. 322 C.A. ;

British Transport Commission v. *Gourley* [1956] A.C. 185 ;

Parry v. *Cleaver* [1969] 1 All E.R. 555, H.L., at p. 557 ;

Beach v. *Reed Corrugated Cases Ltd.* [1956] 2 All E.R. 652 ;

Parsons v. *B.N.M. Laboratories Ltd.* [1964] 1 Q.B. 95, C.A. ;

Du Cros v. *Ryall* [1935] 19 T.C. 444.

Appeal.

Appeal by defendants against the judgment of the District Court of Limassol (Vassiliades, D. J. and Ioannides, Ag. D. J.) dated the 29th May, 1968, (Action No. 459/67) whereby the defendants were adjudged to pay the sum of £5,953.630 mils to plaintiff as damages for wrongful dismissal.

A. Anastassiades and *L. Clerides*, for the appellants.

Sir P. Cacoyannis, for the respondent.

Cur. adv. vult.

The judgment of the Court was delivered by :—

JOSEPHIDES, J. : On the 31st March, 1971, we partly allowed the defendants' appeal on the following terms and we intimated that we would give our reasons later :—

"(1) The finding of the District Court that the Respondent (Plaintiff) was wrongfully dismissed is upheld.

(2) The Respondent (Plaintiff) is entitled to the following damages for the breach of the contract of service by the Appellants (Defendants) :

	£6,062	loss of earnings for 28 months
Less	75	paid on account
	£5,987	
Less	537	Income Tax (P.A.Y.E.) which he would have to pay (approximately)
	£5,450	Net amount of damages.

(3) Appeal partly allowed : The sum of £5,953.630 mils awarded by the District Court to the Respondent (Plaintiff) as damages is reduced to £5,450.000 mils, plus interest from the date of judgment in the District Court, *i.e.* from the 29th May, 1968, to payment, and costs in the Court below. There will be no order as to costs in the appeal."

We now proceed to give the reasons for our judgment.

This is an appeal by the defendant Co-operative Society, known as S.O.D.A.P., from a judgment of the Full District Court of Limassol awarding the plaintiff damages in the sum of £5,953.630 mils, with costs, for wrongful dismissal.

The respondent is a chemist and wine specialist now 71 years of age (he was born in November, 1899) who, prior to his employment by the appellant Society in 1951, was employed between the years 1929 and 1951 by one of the leading wine and spirits factories in Cyprus, K.E.O. Ltd., as a chemist and factory manager. In the year 1951, at the age of 52, he was engaged for the first time by the appellant Society as a technical manager in charge of all the factories of the Society in Cyprus, for a period of five years. This was done by a contract in writing dated the 23rd March, 1951, which included a renewal clause for a further five years in case no notice was given by either party six months before the expiration of the contractual period. His salary was agreed at £1,800 a year plus cost-of-living allowance at the rate paid by the Government of Cyprus to public servants, plus Provident Fund benefits, entertainment allowance and travelling expenses.

On the 26th April, 1956, the original contract was substituted by a similar contract between the parties for a period of three years ending on the 22nd March, 1959. This second contract also included a renewal clause for a further period of three years in case no notice was given by either party four months prior to the expiration of the contractual period. The salary was agreed at £2,100 a year, which included an amount of £400 per annum in respect of entertainment allowance and travelling expenses; but there was no provision for cost-of-living allowance. On the 12th February, 1959, by a Resolution passed at a joint meeting of the appellant Society's Committee and Council of Inspection, in the presence of the respondent, the latter's contract as technical manager of the appellant Society was renewed for a further period of three years.

Finally, we have the last appointment of the respondent, which was made on the 15th March, 1962, and which is the subject of the present appeal. On that day at a joint meeting of the Society's Committee and Council of Inspection, in the presence of the respondent, the following resolution was taken which was immediately accepted by him :—

«Τεχνικὸς Διευθυντής. Ἐπὶ τῇ λήξει τοῦ συμβολαίου τοῦ Τεχνικοῦ Διευθυντοῦ τοῦ ΣΟΔΑΠ κ. Κώστα Κοράλλι τὰ Διοικοῦντα τὸν Ὀργανισμὸν Σώματα ἐπιθυμοῦν νὰ ἐκφράσουν πρὸς αὐτὸν τὴν εὐαρέσκειάν των διὰ τὰς μέχρι τοῦδε εὐδοκίμους ὑπηρεσίας του πρὸς τὸν Ὀργανισμόν.

Ἀποφασίζουν ὅπως ἀπὸ τῆς 23ης Μαρτίου, 1962, ὁ κ. Κοράλλις ἐπαναδιορισθῇ μονίμως εἰς τὴν θέσιν τοῦ Τεχνικοῦ Διευθυντοῦ τοῦ ΣΟΔΑΠ μὲ ὅλα τὰ δικαιώματα καὶ ὑποχρεώσεις ποὺ διαλαμβάνει ὁ περὶ Συνεργατικῶν Ἑταιρειῶν Νόμος καὶ οἱ Ἐσωτερικοὶ Κανονισμοὶ τοῦ ΣΟΔΑΠ μὲ μηνιαῖον βασικὸν μισθὸν ἐκ Λιρῶν Ἑκατὸν πεντήκοντα (£150) πλέον τὸ κατὰ καιροὺς πληρωνόμενον ὑπὸ τῆς Κυβερνήσεως τιμαριθμικὸν ἐπίδομα ὡς τοῦτο καταβάλλεται καὶ εἰς τοὺς ἄλλους ὑπαλλήλους τοῦ Ὀργανισμοῦ.

Εἰς τὸν ὡς ἄνω μισθὸν συμπεριλαμβάνονται τὰ ἔξοδα μεταφορᾶς του εἰς τὸ Ἐργοστάσιον ὡς καὶ τὰ ἔξοδα τῶν παραστάσεών του.

Ἡ ἀσφάλεια τοῦ κ. Κοράλλι ἔναντι κινδύνων καὶ ἀσθενειῶν νὰ πληρώνεται ὑπὸ τοῦ Ὀργανισμοῦ ἐπὶ ποσοῦ ἀσφαλίσεως ὡς καὶ προηγουμένως.»

There is no written contract or other document in respect of this appointment apart from the aforesaid resolution. It will be noticed that the Committee and the Council

of Inspection, after expressing their appreciation for the valuable services of the respondent to the appellant Society, they decided to reappoint the respondent " μονίμως " (permanently), to the post of Technical Manager of the appellant Society with all the rights and obligations provided under " the Co-operative Societies Law and the Internal Regulations of SODAP ", at a monthly basic salary of £150 plus cost-of-living allowance. It was further provided that the above salary included his transport expenses to the factory and entertainment allowance; but the appellant Society undertook to pay for the insurance of the respondent against risks and illness in respect of the same amount of insurance as before.

It should be observed that although the appointment was made subject to the provisions of the Co-operative Societies Law and the " Internal Regulations ", no reference at all was made to the Co-operative Societies Rules; and it is conceded by the appellant Society that the " Internal Regulations " did not affect the position of the parties under the contract in any way. The net result was that the respondent was appointed " permanently " to the post of Technical Manager of SODAP; and one of the questions to be determined in the present appeal is what is the true construction of the aforesaid resolution taken on the 15th March, 1962, by the appellant Society in the presence of the respondent who accepted it.

To revert to the sequence of events, the respondent, after carrying out his duties for about three years after his last appointment in March, 1962, was taken ill in April, 1965. He was examined by a heart specialist, Dr. L. Droussiotis (who gave evidence in the case), and he was found to be suffering from " pulmonary oedema and fibrillation ". It was the view of this doctor that the heart insufficiency and pulmonary oedema were due to insufficiency of the thyroid and that this complaint was of a secondary nature and not due to any organic disease of the heart. On his advice the respondent went to Athens for treatment for a brief period and on his return to Cyprus from May or June, 1965, until October, 1965, he continued to be under the medical observation of Dr. Droussiotis when the latter expressed the opinion that it was no longer necessary to attend him as the respondent's condition had progressively improved. This doctor was further of opinion that as from October, 1965, the respondent was in a position to resume the type of work he had been performing prior to his illness.

On the medical evidence before them, including that of Dr. V. Papadopoulos, called on behalf of the appellant Society, the trial Court found as a fact that at the relevant time the respondent was suffering from "thyrotoxicosis" which was the primary cause of the heart condition he presented, that this was cured by the end of October 1965, and, consequently, the respondent was fit to resume work thereafter for the reasons —

(*a*) that the respondent responded to the treatment prescribed for thyrotoxicosis; and

(*b*) that an organic disease of the heart, if there, can be detected by a cardiogram, and the cardiogram produced did not reveal any symptoms of a heart condition.

This finding of the trial Court was open to them on the evidence and it was not challenged on appeal by counsel for the appellant Society.

However, before October, 1965, and while the respondent was still under treatment, the appellant Society sent to him a letter on the 17th May, 1965, terminating his employment with effect from the 30th June, 1965. The reason given in the letter for such termination was that the respondent had been unable to perform his duties as from the 3rd April, 1965, owing to a serious heart disease, which, it was stated, according to the opinion of the doctors who were attending the respondent, would not allow him to resume work. It was further stated in the letter that his sick leave was extended until the end of May, 1965, and he was thereby given one month's notice of termination of his employment expiring on the 30th June, 1965. On the 16th June, 1965, the respondent replied protesting against the termination of his employment and challenging the appellant Society's contention regarding the medical opinion about the condition of his health. Further correspondence followed and, eventually, the respondent instituted the present action for wrongful dismissal against the appellant Society in February, 1967.

The District Court, after a full hearing, found that the respondent's dismissal was wrongful and awarded him the sum of £5,953.630 mils as damages, as already stated.

The *first point* taken by Mr. L. Clerides on behalf of the appellant Society before us was that, under the provisions of rule 51 of the Co-operative Societies Rules (see

Subsidiary Legislation of Cyprus, consolidated edition of 1954, volume 1, at page 433), the respondent held office " during the pleasure of the committee " and that, consequently, the termination of his appointment was not a wrongful one; and that, in the absence of any agreement to the contrary, rule 51 was applicable. Rule 51 reads as follows :—

" 51.—(1) The committee or, if there is a council, the committee and the council at a joint meeting or sitting, may—

(*a*) appoint such clerks or employees as they consider necessary; and

(*b*) fix the salary, wages or remuneration of every such clerk or employee.

(2) Every clerk or employee appointed under this rule shall hold office during the pleasure of the committee.

(3) Every appointment of a clerk or employee, other than a daily labourer, and his salary, wages or remuneration shall be subject to the approval of the Registrar and shall not be valid and effective until the approval of the Registrar has been signified in writing to the committee. "

This point was also taken before the trial Court who held that rule 51 was *ultra vires* the Law, that is, the Co-operative Societies Law, Cap. 114. However, we are of the view that for the purposes of the present case it is not necessary to decide whether rule 51 of the Co-operative Societies Rules is *ultra vires* or not. This rule, as construed by us, is inapplicable to the present case for the following reasons. The appellant Society is a Co-operative Society established under the provisions of the Co-operative Societies Law, Cap. 114, which in section 18 provides that the registration of a society shall render it a body corporate with, *inter alia*, power to enter into contracts, institute and defend legal proceedings and " do all things necessary for the purpose of its constitution ". It follows that the appellant Society has full powers to enter into contracts, which are necessary for the purpose of its constitution, under the provisions of section 18 of the Law and rule 96. In the present case we have the written resolution of the appellant Society dated the 15th March,

1962, signed by all the members of the Committee and Council of Inspection and accepted by the respondent with the intention of expressing the contract between them. This was a contract of service within the powers of the Society and, therefore, binding on it.

As regards the construction of rule 51 in our view when read as a whole, it applies only to " clerks or employees ", including labourers ; and rule 51(2), which provides that a " clerk or employee " shall hold office " during the pleasure of the committee ", applies only to that category of servants who are " appointed under this rule ". We are further of the view that rule 51 has no application to persons appointed to perform duties of the nature of those of the respondent, that is, as a Technical Manager of the whole business of the Society. In this connection one should consider the nature of respondent's contracts of service with the appellant Society (embodying the conditions of his service) ever since 1951 ; the first contract of a duration of five years, the second of a duration of three years, and the third contract likewise of a duration of three years. It would be inconceivable for the appellant Society to sign a contract on one day for a period of five years and on the following day dismiss their technical manager, relying on the words in rule 51 that he was holding office " during the pleasure of the committee ".

The *second point* taken by Mr. Lefcos Clerides on behalf of the appellant Society was that the trial Court erroneously construed the meaning and effect of the resolution of the 15th March, 1962. It was his contention that such a resolution did not create an appointment for the respondent's working life but that it was an indefinite appointment determinable on reasonable notice. He contended further that the terms of the resolution were not such as to render inevitable the conclusion that a life employment was intended. In support of his submission learned counsel referred to Halsbury's Laws, third edition, volume 25, page 490, paragraph 946 ; *McClelland* v. *Northern Ireland General Health Services Board* [1957] 2 All E.R. 129, at pages 130G, 140 A-C, 142D, 133" I " and 136B-C ; and *Walsh* v. *The Dublin Health Authority* [1962] I.L.T. 82 (before Budd, J.).

The question depends on the true construction of the document in question. Mr. Clerides says that the word " μονίμως " (permanently), does not mean permanently,

but it means an agreement which could be determined at any time on reasonable notice. We do not think that the document can be so read. We agree with the trial Court that it means quite clearly that the respondent was appointed for as long as he could perform his duties. The word " μονίμως " must be construed in the light of its context, the service history of the respondent and the duration of his previous contracts over a period of 11 years. We are in agreement with the view expressed by the trial Court that it would indeed be very strange to hold in this case that in one and the same resolution the appellant Society expressed its appreciation for the respondent's valuable services to the Society and then proceeded to appoint him " permanently ", intending the word to mean that his appointment would be determinable on reasonable notice, a condition which would be less advantageous than the one contained in his previous contract, which was of a duration of three years.

The law on this point is summarised in Halsbury's Laws of England, third edition, volume 25, page 490, paragraph 946, which reads as follows:

> " 946. *Meaning of permanent employment.* It seems that the fact that the employment offered to and accepted by an employee is described as permanent employment does not in itself normally create a promise of life employment or disentitle the employers from terminating the employee's contract of service on reasonable notice. A contract for permanent employment will, however, be considered as a contract for employment for life if the terms of the contract are such as to render inevitable the conclusion that a lifetime employment was intended."

This statement of the law is based on *McClelland's* case, *supra* ; and *Salt* v. *Power Plant Co. Ltd.* [1936] 3 All E.R. 322 C.A.

As already stated, the question turns on the construction of the document and, in arriving at our conclusion, we cannot derive much assistance from any authorities. The question is, has the Society's resolution expressly or by necessary implication deprived the appellant Society of the right to determine by reasonable notice the respondent's contract of service, a right which attaches to all contracts of service of indeterminate duration in the absence of custom or provision expressed or implied to the contrary?

As submitted by Sir Panayioti Cacoyanni for the respondent, the contract of service under consideration was made in order to avoid periodical renewals and to secure the respondent's services for as long as he was able to render such services satisfactorily, regardless of age or period of time. This, we think, was the intention of the parties. A reasonable construction must be given to the word " μονίμως " used in the resolution of the 15th March, 1962, having regard to the nature of the office or work of the respondent as a technical manager, his satisfactory services for eleven years under contract, his age (62 years and 4 months) at the time of his last appointment on the above date, and considering that the use of the word " μονίμως " (permanently) in the context of that resolution would be inconsistent with an appointment determinable at reasonable notice.

To sum up on this point, having regard to the service history of the respondent with the appellant Society, we construe the expression " μονίμως " (permanently) in the resolution of the appellant Society as meaning during the respondent's useful working life. Construing the said resolution reasonably we are of the view that it was inevitable for the trial Court to have reached the conclusion that the respondent's appointment was a life appointment, and, therefore, not subject to termination on reasonable notice. Here, on the evidence adduced, he was able to work up to the age of 68. This was the finding of the trial Court which, rightly, we think, was not challenged on appeal. In these circumstances we agree with the trial Court that the plaintiff's dismissal was wrongful and that the appellant Society is liable to pay him damages for breach of contract.

The *final question* for consideration is the quantum of damages.

The trial Court found that, on the evidence before them, the plaintiff took all reasonable steps to mitigate damages and that all his efforts proved unsuccessful. The respondent tried to find other employment but he failed, and at the time of the assessment of the damages the trial Court had before it evidence of all the loss suffered by the respondent. The hearing of the case was concluded in January, 1968, and judgment, which was reserved, was delivered on the 29th May, 1968. The respondent, who gave evidence before the trial Court, completed the age of 68 by November, 1967. That is, before the conclusion of the

hearing of the case. The following is the reasoning of the trial Court for the amount of damages awarded to the respondent :

" We know that the plaintiff was permanently appointed to his post at the age of 63 and dismissed at the age of 66 not on account of incapacity to work due to old age and we have seen the plaintiff during the conduct of the trial at the age of 68.

Having the above in mind, as well as the nature of his employment, and in the words of Blain J. in *Yetton* v. *Eastwoods Frey Ltd.*, ' doing the best that we can in a necessarily arbitrary way ' we will assume that it would be fair to say that the plaintiff had at the time of breach certainly a capacity for work up to the age of 68 if not for longer.

The plaintiff according to the evidence before us was born in November, 1899, and closed his 68th year by November, 1967. As his dismissal took effect as from 1.7.65 we find that he is entitled to damages equal to his salaries for 28 months.

According to the evidence the yearly emoluments of the plaintiff came to £2,598 made up as follows:

	£
Basic salary	1,800
29% cost of living	522
7% Defendant's contribution to provident fund	126
Thirteenth salary	150
	£2,598."

The finding of the trial Court that the respondent was in a position to work up to the age of 68 was not challenged on appeal, but it was contended on behalf of the appellant Society that it was wrong to assess damages on the basis of 28 months' full salary without any deduction in respect of the following contingencies :

(*a*) that respondent might have found other employment or that he might have fallen ill or died ;

(*b*) that the present value of his future earnings was not taken into account ; and

(*c*) that the respondent would have to pay income tax on his salary on the P.A.Y.E. basis.

With regard to (*a*), no deduction was necessary in respect of such contingencies, as the period of 28 months, on which the award was based, had already elapsed by the time of the conclusion of the hearing of the case, and there was uncontested evidence that in spite of his efforts the respondent was unable to find other employment. Moreover, there was a finding by the trial Court that he was in good health and able to work.

With regard to (*b*), there again, no deduction should be made for the present value of his future earnings as, at the time of the assessment of the damages on the basis of 28 months' salary, that period had already elapsed.

With regard to (*c*), we are in agreement with appellant's counsel that a deduction ought to have been made in respect of income tax which, under the law, would have been deducted from the respondent's salary monthly before the payment of such salary to him.

For the first time the House of Lords held in *British Transport Commission* v. *Gourley* [1956] A.C. 185, that awards of damages representing loss of earnings should be reduced by the amount which the plaintiff would have to pay by way of income tax. That was a case of damages for personal injuries but the same rule has since been applied in claims for wrongful dismissal. In a recent case *Parry* v. *Cleaver* [1969] 1 All E.R. 555, H.L., Lord Reid in the course of his speech said (at page 557) :

> " Two questions can arise. First, what did the appellant lose as a result of the accident? What are the sums which he would have received but for the accident but which by reason of the accident he can no longer get? And secondly, what are the sums which he did in fact receive as a result of the accident but which he would not have received if there had been no accident? And then the question arises whether the latter sums must be deducted from the former in assessing the damages.
>
> *British Transport Commission* v. *Gourley* did two things. With regard to the first question it made clear, if it had not been clear before, that it is a universal rule that the plaintiff cannot recover more than he has lost. And, more important, it established the principle that in this chapter of the law we must have regard to realities rather than technicalities. The plaintiff would have had to pay tax in respect of the income which he would have received but for

the accident. So what he really lost was what would have remained to him after payment of tax. From a technical point of view income tax and surtax were probably too remote. Apart from P.A.Y.E. tax is not payable out of income, its amount depends on a calculation which includes many other factors besides earnings, and standard rate of tax varies from year to year. So a good many lawyers disapproved of the decision of this House. But this House preferred realities to '*res inter alios*' and '*remoteness*'."

According to Mayne & McGregor on Damages, twelfth edition, page 251, paragraph 264, which has been judicially approved, the presence of two factors was necessary to set the stage for the problem which was posed for their Lordships' decision in *Gourley's* case : (1) The sums for the loss of which the damages awarded constitute compensation would have been subject to tax ; and (2) the damages awarded to the plaintiff would not themselves be subject to tax.

"For there cannot be any reason for taking tax into account in calculating damages given in compensation for a loss which would never itself have been taxed : this would let in a taxation where no taxation would have been, which would be unfair to the plaintiff. Equally there cannot be any reason for taking tax into account in calculating the damages if the damages themselves will then be taxed : this would result in a double taxation, equally unfair to the plaintiff. In *Gourley's* case the first factor was indisputably present ; and the second factor was admitted by both sides to be present. Accepting the correctness of this admission, the question which thus unfolded itself was whether the amount of taxation which the plaintiff would have had to pay upon earnings was or was not too remote to be considered in the assessment of the damages. A full House of seven held, with one dissent, that it was not too remote." (Mayne & McGregor on Damages, *supra*, at page 251).

In *Gourley's* case Lord Goddard, with whose speech Lord Somervell and Lord Radcliffe agreed, stated that he was dealing, as to two principles involved, with the cases both of personal injury and of wrongful dismissal, and later cases have accepted this view without further argument : The rule in *Gourley's* case was applied in claims for wrongful dismissal in *Beach* v. *Reed Corrugated*

Cases Ltd. [1956] 2 All E.R. 652, where the argued issue was as to calculating the quantum after taking tax into account. The rule was also applied in other cases.

In *Parsons* v. *B.N.M. Laboratories Ltd.* [1964] 1 Q.B. 95 (C.A.), the majority of the Court of Appeal accepted that the rule in *Gourley's* case applied to cases of wrongful dismissal and held that where the damages remained tax-free the rule applied and that the damages must accordingly be reduced by the amount of income tax that would be payable by the plaintiff on the lost earnings.

Damages for wrongful repudiation of a service agreement are not assessable to income tax (*Du Cros* v. *Ryall* [1935] 19 T.C. 444). The damages for loss of earnings in *Gourley's* case were themselves not taxable in the hands of the recipient (see *Gourley's* case, *supra*, [1956] A.C. 185 at page 197). As already stated, this rule was applied in wrongful dismissal cases as in *Beach's* and *Parsons'* cases.

Consequently, relying on the above rule, we reduced the amount of damages for wrongful dismissal awarded to the respondent by £537 in respect of P.A.Y.E. income tax (approximately) as follows :

	£
(*a*) in respect of the period 1.7.65–31.12.65 ..	65
(*b*) in respect of the year 1966	283
(*c*) in respect of the period 1.1.67–30.10.67 ..	189
	537

For all these reasons we allowed the appeal partly and made an order in the terms stated in the opening paragraph of the present judgment.

Appeal allowed in part.