Judgment
3-9-1948

No. 62 of 1946.

In the Privy Council.

ON APPEAL

FROM THE SUPREME COURT SITTING AS A COURT OF APPEAL, JERUSALEM.

BETWEEN

MARY KHAYAT - - - - - - - - - - *Appellant*

AND

1. NASRALLAH SALIM KHOURY
2. NASRALLAH SALIM KHOURY on behalf of the heirs of his late brother Youssif - - - - - *Respondents.*

RECORD OF PROCEEDINGS.

STONEHAM & SONS,
108A CANNON STREET, E.C.4,
Solicitors for the Appellant.

BULCRAIG & DAVIS,
AMBERLEY HOUSE,
NORFOLK STREET, W.C.2,
Solicitors for the Respondents.

The Solicitors' Law Stationery Society, Limited, Law and Parliamentary Printers, Abbey House, S.W.1.
WL1427-9942

In the Privy Council.

No. 62 of 1946.

ON APPEAL

FROM THE SUPREME COURT SITTING AS A COURT OF APPEAL, JERUSALEM.

BETWEEN

MARY KHAYAT - - - - - - - - - *Appellant*

AND

1. NASRALLAH SALIM KHOURY
2. NASRALLAH SALIM KHOURY on behalf of the heirs of his late brother YOUSSIF - - - - - - - *Respondents.*

RECORD OF PROCEEDINGS.

INDEX OF REFERENCE.

EXHIBITS AND DOCUMENTS.

In the Privy Council.

No. 62 of 1946.

ON APPEAL

FROM THE SUPREME COURT SITTING AS A COURT OF APPEAL, JERUSALEM.

BETWEEN

MARY KHAYAT - - - - - *Appellant*

AND

1. NASRALLAH SALIM KHOURY
2. NASRALLAH SALIM KHOURY on behalf of the heirs of his late brother YOUSSIF - - *Respondents.*

RECORD OF PROCEEDINGS.

In the District Court, Haifa.

No. 1. Statement of Claim, 6th August 1943.

No. 1.

STATEMENT OF CLAIM.

Civil Case No. 181/43.

Haifa, 6th August, 1943.

IN THE DISTRICT COURT OF HAIFA.

MARY KHAYAT - - - - - - Plaintiff

V.

1. NASRALLAH SALIM KHOURY, of Haifa
2. NASRALLAH SALIM KHOURY, of Haifa, on behalf of the heirs of his late brother YOUSSIF SALIM KHOURY - - - - - Defendants.

AMOUNT OF CLAIM: LP.1414.784.

STATEMENT OF CLAIM.

1. Plaintiff is temporarily living in Haifa and will be represented in this case by Messrs. P. Margolin, Michael and Wadih Attallah, Mrs. M. Shtarkman and Theodor Margolin, Advocates, whose address for service is: Bovis House, New Business Centre, Haifa.

2. Defendant is a resident of Haifa and together with his late brother Youssif Khoury were members of the firm S. N. Khoury which firm was declared bankrupt on 27th October, 1930, but all bankruptcy proceedings were closed in July, 1940, after provision had been made for the payment of all debts and interest thereon up to the date of the adjudication of the Bankruptcy.

In the District Court, Haifa.

No. 1. Statement of Claim, 6th August 1943, *continued.*

3. Plaintiff claimed from the Syndic in Bankruptcy of the said firm the amount of 2,347 Turkish Gold Pounds as per three promissory notes of which the following are the particulars :—

(A) 2,000 Turkish Pounds maturing on 23.5.30.
(B) 300 Turkish Pounds maturing on 23.5.30.
(C) 47 Turkish Pounds maturing on 21.10.29.

4. Owing to disagreement, Plaintiff instituted proceedings in the District Court of Haifa against the said Syndic in respect of these three notes. The claim included interest up to the 27th October, 1930, but Plaintiff reserved her claim for interest due and due accruing after date of adjudication of Bankruptcy.

The case went on appeal to the Supreme Court and eventually to the Privy Council.

As a result Plaintiff was awarded interest up to 27.10.30, but both the Supreme Court and Privy Council reserved to the Plaintiff her right to sue under Art. 305 of Ottoman Commercial Code for interest due on the amount of the promissory notes after the date of adjudication of Bankruptcy.

5. The principal due under the judgment of the Privy Council is LP.2,052.475 ; on this amount the sum of LP.780 was paid in the following manner :—

LP. 60.– (Sixty Palestine Pounds) on 18.8.1934.
20.– (Twenty Palestine Pounds) on 9.9.1934.
200.– (Two Hundred Pal. Pounds) on 21.12.1935.
200.– (Two Hundred Pal. Pounds) on 16.3.1936.
200.– (Two Hundred Pal. Pounds) on 19.1.1937.
100.– (One Hundred Pal. Pounds) on 9.7.1937.
100.– (One Hundred Pal. Pounds) on 2.9.1937.
900.– (Nine Hundred Pal. Pounds) on 23.9.1937.

Interest due on LP.1,780 since 27.10.1930 up to the respective dates of payment stated above, and interest due on LP.272.475 from 27.10.30 to 1.8.43 make in whole LP.1,414,784.

6. Whereas at the time of the closing of the Bankruptcy considerable assets remained undistributed and were handed over to the Defendants without satisfying interest due after the adjudication of Bankruptcy.

And whereas the firm as well as its members and or their heirs are jointly and severally liable for all interest up to the date of payment.

It is hereby prayed that a copy of this Statement of Claim be served on Defendants, Defendants requested to file a Statement of Defence and eventually judgment be given for the amount of interest claimed as well as for interest due after the filing of this action up till date of payment together with costs, advocate fees, and that an order be made confirming the Provisional Attachment on the money due to Defendant in Execution File No. 121/42.

(Sgd.) W. ATALLAH,
For Plaintiff.

In the District Court, Haifa.

No. 2. Statement of Defence, 20th September 1943.

No. 2.

STATEMENT OF DEFENCE.

IN THE DISTRICT COURT OF HAIFA.

Civil Case No. 181/43.

Between MARY KHAYAT — Plaintiff

and

NASRALLAH KHOURY, personally and on behalf of the heirs of his late brother YOUSSIF SALIM KHOURY — Defendants.

DEFENCE.

1. Para. 1 of the Statement of Claim is admitted.

2. Para. 2 of the Statement of Claim is admitted, except that Defendant denies the allegation that on closing the said Bankruptcy provision was made for the payment of all debts and interest thereon up to the date of adjudication of the Bankruptcy.

3. Para. 3 of the Statement of Claim is admitted.

4. Para. 4 of the Statement of Claim is denied ; Plaintiff instituted proceedings in Civil Case No. 183/37 in the District Court of Haifa in respect of the promissory notes, but the Statement of Claim in the said case claimed interest thereon generally and was not limited to the period up to the 27.10.1930.

It is admitted that the said case was appealed to the Supreme Court and subsequently the Privy Council, but neither the Supreme Court nor the Privy Council could reserve a right unto the Plaintiff to sue for interest pursuant to Art. 305 of the Ottoman Commercial Code. The said Art. 305 gives Plaintiff no right to sue for interest, it merely reserves certain rights unto Plaintiff in the event of Defendant applying for his rehabilitation.

5. Para. 5 of the Statement of Claim is denied, except that the amount of LP.1,780 was paid as stated thereon and the sum of LP.272.375 was paid into Court in the said proceedings on the 13th December, 1937 and was subsequently withdrawn, without the knowledge of Defendant and contrary to law and procedure.

6. Para. 6 of the Statement of Claim is denied as well as Plaintiff's claim for interest on his claim, which being interest upon interest is in any case not recoverable.

7. Defendant further raises the following points in defence of this case :—

(A) The Statement of Claim discloses no cause of action.

(B) The Plaintiff did not protest the said Promissory Notes, so that no interest whatsoever is payable thereon.

In the District Court, Haifa.

No. 2. Statement of Defence, 20th September 1943, *continued.*

(C) The Plaintiff's cause of action is barred in accordance with Article 146 of the Ottoman Commercial Code, more than five years having elapsed from—

(1) due date

(2) date of last payment.

(D) Prior to the Statement of Claim in the said Civil Case 183/37 Plaintiff never claimed interest and never made any reservation of her rights, if any, to claim interest either from the makers of the said Promissory Notes or from the Syndics in Bankruptcy of the said makers. Plaintiff has thereby admitted that no interest is due to her.

(E) Plaintiff's claim for the principal amount of the said Promissory Notes was admitted by the said Syndics in Bankruptcy on the 14.3.34 and duly approved and certified by the Judge Commissaire which admission was duly notified to the Plaintiff. The said admission was not appealed by the Plaintiff and no claim in respect thereof was raised in the Competent Court, so that Plaintiff is now barred from making her present claim and demanding more than the Syndic and Judge Commissaire adjudged her. The matter is therefore " res judicata."

(F) In the said Civil Case 183/37 Plaintiff claimed interest up to date of final payment of the said promissory notes, but the District Court, Supreme Court and Privy Council all dismissed her claim for interest for the period subsequent to the 27th October, 1930. Plaintiff is therefore barred from making her present claim and the matter is res judicata. Such rights as were reserved in the respective judgments in the said Courts do not give rise to any cause of action.

WHEREFORE it is prayed that Plaintiff's case may be dismissed with costs and advocate's fees.

(Sgd.) H. C. WESTON SANDERS,

Advocate for Defendant.

This Defence was filed by H. C. WESTON SANDERS, Advocate for the above-named Defendant, whose address for service is c/o his said Advocate at Newton's Place, 8 Stanton Street, Haifa.

No. 3.

AGREED ISSUES.

In the District Court, Haifa.

No. 3. Agreed Issues, 27th October 1943.

IN THE DISTRICT COURT OF HAIFA.

Civil Case No. 181/43.

Between MARY KHAYAT Plaintiff

and

NASRALLAH KHOURY, personally and on behalf of the heirs of his late brother YOUSSIF SALIM KHOURY Defendants.

AGREED ISSUES.

1. Whether or not the Statement of Claim discloses any cause of action.

2. Whether or not the cause of action is barred owing to prescription.

3. Whether or not Plaintiff prior to the Statement of Claim in Civil Case No. 183/37 claimed interest or made any reservation for interest from the makers or from the Syndic and if so and if not, is she thereby barred from claiming interest now.

4. Whether or not the admission and confirmation of the Syndic for the original debt without interest due constitutes res judicata against Plaintiff.

5. Whether or not Plaintiff in Civil Case No. 183/37 claimed interest up to date of final payment and whether or not the Courts rejected her claim for interest except till date of adjudication, and the present claim is res judicata.

6. Whether or not Plaintiff can claim interest on interest.

7. What amount of interest is due if any, and if such interest is due is it recoverable from the members of the partnership jointly and severally.

8. Whether or not undistributed assets were handed over to the Defendant at the termination of the Bankruptcy proceedings sufficient enough to cover the amounts of the claim.

(Sgd.) P. MARGOLIN, For Plaintiff.

(Sgd.) H. C. WESTON SANDERS, For Defendants.

27.10.1943.

In the District Court, Haifa.

No. 4. Proceedings before Judge Shems and Judge Nasr, 9th December 1943.

No. 4.

RECORD OF PROCEEDINGS before Judge Shems and Judge Nasr.

Civil Case No. 181/43.

IN THE DISTRICT COURT OF HAIFA.

Before : Their Honours Judges SHEMS AND NASR.

IN THE MATTER of :

MARY KHAYAT — Plaintiff

V.

NASRALLAH SALIM KHOURY personally and on behalf of the heirs of his late brother YOUSSIF SALIM KHOURY - Defendants. 10

Date 9 December 43.

For Plaintiff : Mr. Margolin and Wadih Eff. Attallah.

For Defendants : Mr. Sanders and Elias Eff. Catafago.

Mr. Margolin : Produces agreement for remuneration—Claim by a creditor 27th October, 1930, declared bankrupt. Firm Partnership—Youssif—Creditor 2,347 Turkish Gold Pounds—Bills.

14.3.34 Plaintiff admitted as creditor for £2,347 Turkish Gold Pounds converted and assessed by the Syndic as LP.2,052.375 mils. Creditor not satisfied with this rate of exchange, In 1937 Plaintiff lodged a case against 20 Syndic and first Defendant, claiming higher amount, conversion to be rate of payment. Claimed the amount as assessed by her and interest on the amount. 26 November 1937 Khoury dismissed from case—Case continued against Syndic. Before case raised she had been paid LP.1,780. Privy Council gave judgment.

2,052.375
—1,780.–
———————
272.375

Plus interest up to date of adjudication reserving claim of interest under Art. 305 of Commercial Code. Meantime Bankruptcy closed. Syndic 30 closed. Security by bankrupt. Closing of bankruptcy by order—19th July 1940, upheld on appeal on 21 October, 1940. Interest on the principal as from adjudication to date of respective payments of instalments as in Statement of Claim without prejudice to any future claim of interest until adjudication and for balance of principal if any.

Whether interest is payable from date of adjudication to payment. No basing on Article 305.

Based on general liability to pay interest when he has assets. The article which stops interest is 155 of the Commercial Code so far as estate of bankrupt is concerned. Case governed by Ottoman Rules of Bankruptcy. 40 Ottoman Code is a repetition of French Code. Art. 155 is similar to Art. 445 of the French Code—Eugène Hervé Manual Formulaire, page 21, Cohendi Darras Vol. 2 page 60.

The interest ceases as regards the Masse but not as regards the bankrupt.

French law benefit of creditors—Masse. Union of Creditors. Othman Sultan p. 265. Comments to Art. 147.

Article 244 Ottoman Commercial Code. 246. Stoppage of interest against Masse and not against Defendant personally, and when Masse has been dissolved, a claim can be made against him personally, page 21 of Eugène Hervé Article 245 of French Code.

Dallaz Vol. 6 page 251, Art. 1855.

No stoppage of interest against Defendant personally. Article 155 Ottoman Cessation. 445 French. Thaller Droit Commercial 7th Ed. p. 1140 Arts. 1909, 1910. Defence's cause of action—entitled to interest under the law itself in so far as he has money; Prescription—Ottoman law applies. Art. 1668, bankruptcy is a bar to prescription. No action can be brought against bankrupt during bankruptcy—Art. 153 of Commercial Code corresponds Art. 443 of French Code. Prescription does not run in favour of bankrupt—Thaller page 1123 paragraph Art. 1873. Cohendi Darras, Sec. 25 page 60 claim for interest not prescribed during period of bankruptcy. Dorio Pallagi Art. 234 p. 119 number 3 note 3. Admitted 14.3.34, by Judge Commissaire and Syndic as creditor for the Principal. Admission of Defendant stops prescription.

Pallagi, page 152, number 19, page 154 Note 2 to Article 305.

Who has to pay interest after adjudication if there is property? Syndic, if principal is paid and there is property. Others hold that Syndic gives over to bankrupt the excess property, and claim of interest made from him.

Interest in general was claimed. Judgment of Privy Council is not res judicata. He was not a party to the action. Partners—joint and several liability. Section 18 Partnership Ordinance, Art. 13 Commercial Code. Civil Appeal 120/30. Witnesses not present—Applies for adjournment.

Aziz Eff.—feast. Other witnesses.

Mr. Sanaers: Mr. Margolin to have applied to admit facts.

Mr. Margolin: Adjournment to produce evidence, no witness ready.

Mr. Sanders: Costs.

Mr. Margolin: Objects.

Mr. Sanders: Copies of documents—Registrar held to make copies of documents.

Plaintiff to pay costs to Defendant of to-day's adjournment which are fixed at LP.3.–. Proceedings adjourned in order to hear the evidence of the Plaintiff and of the Defendant (if any) for a date to be fixed by Registrar (two days to be allotted for this purpose).

(Sgd.) AARON SHEMS,
Judge.

Adjourned to January, 12 and 13, 1944 in presence of Mr. Margolin and Mr. Sanders.

(Sgd.) D. YOUSEF,
Registrar.
9.12.43.

In the District Court, Haifa.

No. 5.
Proceedings —*continued.*
12th January 1944.

No. 5.

PROCEEDINGS (continued).

12 January 44.

Mr. Margolin, Mr. Wadih for Plaintiff.

Mr. Sanders for Defendant in his private capacity.

Mr. Catafago for Defendant in his capacity as heir of Youssif.

Mr. Margolin: Authority as to res judicata. Hailsham Vol. 13, p. 409, 410, 411, Sections 464, 466.

Plaintiff's Evidence.

No. 6.
Aziz Bey Daoudi,
12th January 1944.

No. 6.

PLAINTIFF'S EVIDENCE.

1st Witness: AZIZ BEY DAOUDI, sworn, replies to Mr. Margolin:

Judge Commissaire in the Bankruptcy of Salim Nasrallah Khoury from 1931–1938. In 1935, the balance showed no more than 35% of assets. Then it began to improve. There was a committee of creditors of five persons. They waited until prices got higher, and then liquidated the affairs to the satisfaction of the creditors and the debtor. In the result the creditors got 100% of the approved claims. There remained over £100,000 for the bankrupt. The creditors always claimed interest on their claims as from the date of adjudication. This Notary Notice was notified
P/1. by the committee of creditors to the Syndic, marked Exhibit P/1. This application was not entertained on the ground that it was intended to pay first 100% of the debts that is to say to pay the debts in full. In 1936
P/2 another application was also submitted marked P/2. This was my answer.
P/3 P/3 signed by me as appended to the application P/2 and I explained that the bankruptcy could pay 100% the debts. I discussed with Mr. Nasrallah the question of the interest on the debts. I explained to him that the estate was not liquidated at once because it would not bring 100% and made it clear to him that in consideration of the creditors waiting to receive their claims they were entitled to interest on their claims in as much as the estate realised more than the debts. Nasrallah agreed on principle to pay interest and left it to me to assess its amount, but he was not inclined a high rate of interest as compensation to the creditors who had waited seven or eight years to receive their claims. No definite result was achieved. The payments had not been made, but it was realised that the assets would pay more than 100 per cent. of the debts.

Cross-Examined by Mr. Sanders:

The bankruptcy was not closed while I was Judge-Commissaire. As Judge-Commissaire 100% of the debts were paid, and recommended to the Court to close the bankruptcy, but the Court did not close it owing to certain claims by the advocate of the bankruptcy and the present Plaintiff who claimed in gold, and her claim was approved in notes. As the Court did not approve the recommendation to close the bankruptcy, resigned, I wrote two times to the Court to this effect. Before the closure of the

bankruptcy the Court allowed the sale of the Khreibeh land by Nasrallah and the bankrupts although he was still a bankrupt and they sold them direct for over LP.80,000. He paid what was due about LP.43,000 and Nasrallah obtained the balance of about LP.40,000.

I had discussions with Nasrallah about the interest when the creditors pressed for payment and I influenced them to wait, that was in 1935 and 1936. The reason was more of a moral motive than legal because I influenced the creditors to wait for the payment on their claims, although they had pressed for payment. It was realised that if the estate was sold earlier the debts would not have been paid in full, and because the creditors waited, and there was a surplus of the assets over the debts, it was morally obliging that this surplus be divided between the bankrupt and the creditors.

Cross-Examined by Elias Eff.

The first payment made to the creditors 40% in 1934 (not sure). There were then properties remaining to the bankrupts. In 1934 I do not remember whether the remaining properties could bring at that time 100% of the remaining debts. In 1933 and not 1935 things began to improve. The committee of creditors was representative of all the creditors and it was elected by all the creditors, and all the creditors had signed a declaration appointing the said committee of creditors; majority of creditors, and may not be all of them, they may have been all of them who signed, and probably one or two who did not sign because they were absent. This committee was in the nature of an advisory committee rather than a legal body. The committee was not appointed in my presence, a mazbata was presented to me, and many came to me and confirmed this appointment of committee. Mr. Michael was one of the committee of creditors. Although he made the Notary Notice for interest as a member of the committee in P/1, he also presented the application P/2 in his private capacity for interest. I know the Plaintiff personally. She claimed gold, and we approved her claim in notes, and whenever she received payment she objected on the ground that she wanted gold. P/1 P/2

I approved her claim on 17.3.1933, LP.2,052.375 as provisional debt, to be confirmed before presentation of the promissory notes or a photographic copy of them. This application D/1 was received by me, and on the basis of it we confirmed her claim provisionally. In this application there is no mention of claim for interest or any reservation for claim for interest. D/1

This second application also reached us through the Court, marked Exhibit D/2; it was sent in reply to their notification of our confirmation of her claim as above and she objected that her debt was in gold, and sent the photographic copies of the promissory notes. In D/2 also no claim for interest was made and no reservation for such a claim was made. It was not expected then to receive the whole amount of the claim and nobody thought of interest. This third application was also received D/3—no claim for interest or reservation of such a claim is contained in it. D/2 D/2 D/3

Left the Judge Commissaire in 1938. It was not closed then. Mohammed Eff. Baradey appointed Judge-Commissaire. Elias Sahyoun appointed Syndic. Does not know about the bankruptcy in 1940. When left it in 1938 there was about LP.100,000 surplus.

In the District Court, Haifa.

Plaintiff's Evidence.

No. 7. Massoud Nabhani, 12th January 1944.

P/4, P/5. P/6. P/7. P/8. P/9. P/10. P/11. P/12.

D/4.

No. 7.

2nd Witness : MASSOUD NABHANI, sworn, replies to Mr. Margolin :

Clerk of the District Court. In file District Court Haifa 103 there is a letter from the Chief Interpreter to the Judge-Commissaire, a copy of which is exhibit P/4. P/5 is certified copy of Order in Civil Case 143 of 1937. (Mr. Margolin produces P/6 which is a reply to the case 183 of 1937 which is not objected to by any of the Defendants.) This is a certified copy of a ruling in Civil Case 183 of 1937, marked P/7. This is a copy certified copy of agreed statement of facts in case 183 of 1937, marked P/8. This is a copy of Order of Court of 19th July, 1940, marked P/9. This is a certified copy of the judgment of the Supreme Court in Civil Appeal 197 of 1940, marked P/10. This is a certified copy of an Order given on 8th November, 1940, in Civil Case No. 144 of 1930, marked P/11.

This is a certified copy of a letter District Court Haifa 103–1235 dated 13th June, 1937, marked P/12.

Cross-Examined by Mr. Sanders :

This is a certified copy of an application dated 8th May, 1940, in Civil Case 183 of 1937, marked D/4. It has endorsed copy of the Order of Registrar of 9th May, 1940.

No Cross-Examination by Mr. Catafago.

No Re-Examination.

No. 8. Haim Nadav, 12th January 1944.

No. 8.

3rd Witness : HAIM NADAV, sworn, replies to Mr. Margolin :

Clerk in Land Registry Office. These extracts were made in the Land Registry marked P/13, showing properties in the name of Youssif and Nasrallah Khoury issued on 5.1.44. First registration in 1921. They are still in their names up to 5.1.44.

No Cross-Examination.

No. 9. Labib Hawa, 12th January 1944.

No. 9.

4th Witness : LABIB HAWA, sworn, replies to Mr. Margolin :

District Court Execution File 121 of 1942, lodged by Mr. Kaiserman, on behalf of the Plaintiff. There is a deposit collected from Nasrallah Khoury for LP.1,605.734 mils, paid, it is written as paid by N. Khoury as deposit to secure judgment in respect of the shares of Nasrallah, Suraya and Cæsar 20 of 24 shares in the bankruptcy. The deposit is attached and still in the office of the Execution Office. It was paid on 22nd March, 1943.

Cross-Examined by Mr. Sanders :

Judgment in Civil Case 183 of 1937 dated 17th January, 1940 was put for execution in these proceedings.

Cross-Examined by Elias Eff. Catafago :

In the same proceedings on application was filed by Mr. Catafago. He mentioned then an amount of LP.133.705 was interest on LP.2,300 Ottoman Gold Pounds as from 23.5.1930 to 27.10.1930 taking into account that a Turkish Gold Pound at LP.1.510 mils. There was an endorsement by the Execution Office about costs. Out of LP.1,605 paid the share of Nasrallah—

	LP.	931.124 (personally)
	LP.	77.593 (as heir)
Total :	LP.	1,008.617
Suraya	LP.	465.562
Cæsar	LP.	77.593

This amount does not include the costs.

No. 10.

5th Witness : Mr. NASRALLAH KHOURY, sworn, replies to Mr. Margolin :

Signed bills to Plaintiff. She was one of the claimants in the bankruptcy. There was a dispute as to the conversion of the gold pound. Interest is now claimed for interest from the date of adjudication to the date of payment. Have not paid it. Did not pay any amount other than what the Syndic has paid to her. Have properties, which were before in hands of Syndic and received it after closure of bankruptcy.

Cross-Examined by Elias Eff. Catafago :

The bankruptcy has been closed. The bankruptcy left debts when it was closed LP.18,000. Other than this Defendant paid in Court LP.5,000. Borrowed money in order to pay this LP.5,000. Mortgage to Zeid in the amount of LP.16,000. Borrowed LP.5,000 from Abu Fadel. All these amounts I paid to Judgment Creditors. My share in Suk Sultani, Gharb, Askile, 10 of 90 shares to the value of about LP.1,200.

Re-Examined : And Yazour was given as security for the borrowing. It was in the bankruptcy. It was mortgaged for LP.16,000 to Zeid. The mortgage was made after the closure of bankruptcy.

6th Witness :

Mr. Margolin : That is case for Plaintiff.

Mr. Sanders : Not calling any witnesses. Produces agreed documents marked D/5 Statement of Claim in Civil Case 183 of 1937. D/6 Defence of the Syndics the Defendant No. 1 in that case. D/7 Reply of Plaintiff in that case. D/8 Notice of payment into Court in the same case. D/9 issues in the same case. D/10 Extract of the summing up of the defence of Defendant on the issue of interest. The question of interest is res judicata by those proceedings. D/11 summing up of case for Plaintiff in those proceedings. D/12 is the judgment of the District Court. D/13 a copy of the Privy Council.

D/5. D/6. D/7. D/8, D/9. D/10. D/11. D/12. D/13.

Mr. Catafago : No witnesses. Nothing to produce.

Adjourned to hear addresses of counsel for to-morrow.

(Sgd.) A. SHEMS,
Judge.

In the District Court, Haifa.

No. 11. Proceedings —*continued*, 13th January 1944.

No. 11.

PROCEEDINGS (continued).

13 January 44.

Mr. Margolin, Wadih Eff., Mr. Sanders, Elias Eff. Catafago.

Mr. Sanders: Palestine Law is sufficient and no necessity to refer to French Law. No provision in Order in Council to import French Law similar to Art. 46 of the Order in Council.

Res Judicata.

Judgments in Civil Case 183 of 1937.

Civil Appeal 17 of 1940. Privy Council Appeal 1/1942. Cause of action in 183 of 1937 included the full claim in these proceedings. Paragraph 8 of the Statement of Claim D/5. Interest was claimed until payment D/11, page 3 D/12 Section 12. The claim for interest had been dismissed.

Article 305 of the Commercial Code. Halsbury Vol. 13 page 410, and onwards. Paragraphs 465, 466, 467, 468.

Phipson, Evidence Res Judicata, 7th Ed., page 398.

The bankrupt and the Syndic in Bankruptcy are privies. Phipson, p. 398 onwards, particularly 400, 401, 402, new page 406.

Civil Appeal 130 of 1943. Dual capacity of Syndic representing the masse of the creditors and taking care of the interests of the debtor. Had judgment been given against the Syndic for interest, the debtor would have had to pay it. This is the test of mutuality. The subject-matter is precisely the same.

P.L.R. 1939, page 132. Civil Appeal 6 of 1939. P.L.R. 1941, page 33. Civil Appeal 234 of 1940. Phipson 410. Issue 4 in D/9 in Civil Case 183 of 1937. Halsbury Vol. 3, page 426 par. 479. Trustee in bankruptcy and bankrupt are privies p. 428, 432. Having claimed against the Syndic she cannot claim the same subject-matter against the debtor, they being privies. At material time the interest of the Syndic was that of the bankrupt.

Case 183/1937 Defendants paid into Court LP.272.375.

D/6 paragraph 10 withdrawal of the amount is tantamount to settlement of claim.

Civil Procedure Rules, 1935, Supplement II (1936) 207. Rules 62, 79, 67, 70.

D/8. Form 20 of Schedule I. This amount was specifically paid in satisfaction of the whole claim. D/4. Rule 67. Annual Practice 1935, page 391, order 22, rule 1, 2, 3. It is in the nature of res judicata. The money was withdrawn in satisfaction of the Plaintiff's claim. The Privy Council Judgment was made on the assumption that the money deposited was withdrawn Odgers 10th Edition pages 240, 239.

Prescription.

Action on 3 promissory notes.

DATED	TURKISH GOLD POUNDS	PAYABLE
11.10.29	2,000	23. 5.30
11.10.29	300	23. 5.30
11.10.29	57	21.10.29

LP.10 paid on account of the third promissory note. Bills of Exchange Ordinance, Section 96.

Civil Appeal 126/31.

Art. 146 of the Commercial Code—Proceedings barred from date of maturity. Action is barred after 5 years from the date of maturity. May 1930 is crucial date. P/8 paragraph 6, 17th March, 1933. Debt confirmed on 15th April, 1933.

LP.1,780 paid by Syndic on dates between August 1934 September 1937. LP.272.375 paid in on 13th December, 1937, Exhibit D/8. More than 5 years elapsed after confirmation or payments. Civil Case 183/37 rides two horses at same time, in which case he must admit that he claimed interest and consequently res judicata or if not claimed there is prescription. P/8 para. 5. D/2. Interest was not claimed. No payments on account made on interest to interrupt prescription. Interest—it should have been claimed. Civil Case 183 of 1937, 2 years late. The debt is absolutely prescribed. No reservation made until 1937, and in 1937 too late.

1.35. Mr. Sanders, 1 hour.

Mr. Catafago, 1 hour.

Mr. Margolin more than 1 hour.

Adjourned for a date to be fixed by Registrar.

(Sgd.) AARON SHEMS,
Judge.

Adjourned until Thursday, 3rd February, 1944, in presence of advocates for both parties.

(Sgd.) D. YOUSSEF,
Registrar.
13.1.44.

No. 12.

PROCEEDINGS (*Continued*).

3 February 44

Mr. Margolin, Wadih Eff. Attallah, Mr. Sanders, Elias Eff. Catafago.

Mr. Sanders: Prescription, whether Mejelle or Art. 146 of the Commercial Code. Art. 1668 of Mejelle does not apply nor Article 1660. Civil Appeal 126/1925. Civil Appeal 36/1942 9 P.L.R. p. 367, 371, re Benzon Bower, Chetwynd 110 L.T.R. Page 926, Bankruptcy proceedings do not interrupt limitation. Plaintiff's cause of action has prescribed and no action can be maintained on the promissory notes. Art. 305 does not give rise to a cause of action.

Application for rehabilitation not made. No cause of action whatsoever shown in the statement of claim. Claim interest on capital and on interest which is not permissible under the Law of Interest Civil Appeal 83/1930, Vol. I, Rottenberg, page 31.

LP.272.475 was paid to Court on 13th December, 1937. Paragraph 5 of the Statement of Claim—Exhibit D/8, received actually on 8th May,

In the District Court, Haifa.

No. 12. Proceedings *—continued,* 3rd February 1944, *continued.*

1940, D/4. Calculation as to interest on this amount if due to Plaintiff. D/9 para. 2 of Statement of Claim. No interest at all paid, not even until date of adjudication. Res Judicata. Acceptance of money paid into Court—Prescription. No cause of action. Plaintiff's case cannot stand.

Elias Eff.: No cause of action—Interest is a form of damages Arts. 106 to 112, Civil Procedure Code. No Notary Notice or protest as required by Article 106. Exemption Art. 107. 3 promissory notes, 2 maturing 23.5.1930, 21.10.1925. No promise to pay interest—no protest made or notarial notice. Art. 112 of the Civil Procedure Code. No protest.—1.8.43 date of filing—money paid in Court on 13th December, 1937. Received on 8th May, 1940. Section 10 of Judgment of District Court. Bills of Exchange (Protest) Ordinance 31 of 1924. Art. 141 of the Commercial Code. They all deal as to the calculation of interest and from when. They do not consider the liability to pay interest. Only Article 106 deals with liability for payment of interest.

Art. 119 of the Commercial Code, Art. 120 of the Commercial Code. Protest should be made in order to incur upon debtor the liability to pay interest.

Civil Case 283/40 District Court Haifa—Civil 117/42 Commercial Code applicable. Arts. 155, 305.

Interest payable on application of Art. 305 page 5 of Othman Sultan.

French Code 1807, Amendment in 1836—Ottoman Code 1266. Lyon Caen Vol. 7 p. 285 para. 268. Article 2251 Code Civil Interest. Jurists view that interest is claimed by virtue of the Civil Law and not of the Commercial Code. Privy Council Appeal, 54/1938 P.L.R. Vol. 7 p. 94. Khoury-Germain. Art. 455 French Code Commercial, Mejelle does not allow interest.

Prescription: 5 years Article 146 Commercial Code. Othman Sultan, page 259, Cohendi Darras Vol. I Book I Chapter 8, page 743, 744, Section 1806.

Lyon Caen Renault Vol. 4 p. 396. Dalloz Vol. 4 page 187, para. 710

2 promissory notes due L.T.	2,000	23.5.1930
	300	
1 promissory note due	47	21.10.1929.

The first claim for interest made on 27.10.1937 in Civil Case 183/1937, from Syndic and from Defendant.

From maturity to date of filing of this action, a period over 5 years has lapsed—it is 14 years. 22.2.1933 claim made to Syndic for verification D/1, 23.3.33 Second application, D/2, 19.4.1933, D/3. In none of them any claim for interest was made nor a reservation made in respect of it.

French Law: Interest is a personal debt from the debtor. Prescription runs in respect of such personal debt. Claim should have been made against the debtor for interest. Code Civil 1531. Dalloz p. 186 par. 708, p. 184. Period 5 years.

Res Judicata.

D/1. Plaintiff applied for verification of claim.
D/2. 17.3.33 Syndic verified debt.
D/3. 15.4.33 Exh. P/8 p. 3
Exh. P/8 p. 4 notification to Plaintiff.

Cohendi Darras. p. 130 Civil Case 183/1937 claim filed on 27.10.1937, Defendant received summons. Filed Defence P/6 Court ordered 26.11.37. P/7 Plaintiff did not cross-appeal from this Order.

Jointly and severally : Civil Appeal 120/1930 P.L.R.I., p.553—Raison Sociale—Raison de Commerce. Joint and not several. C.A. 130/1943—Apelbom 456.

Interest on interest—Dalloz p. 186, para. 7P9. No protest—Ottoman Code to be followed—French Code prescription, res judicata—no joint and several—no interest on interest.

Mr. Margolin (*Issues*) : Issues.

1. There is a cause of action. It is interest due from debtor personally. It became due in 1940. Assets remained and handed over to bankrupt—Unsatisfied claim for interest.

2. Prescription. Proceedings against bankrupt stop under Art. 153 of Commercial Code. The claim could not be brought during the bankruptcy. P/4 Order of Court. P/5 12th August, 1937.

Authorities : Bankruptcy interrupts prescription. Claim must be made to Syndic within time. There must be a judicial demand. Confirmation is equivalent to judicial demand. The demand for interest may not be made. The demand of the principal debt is sufficient for claim of interest.

Mejelle applies. Ottoman Commercial Code applies. Mejelle—prescription and not limitation. Commercial Code—5 years prescription on a claim for promissory notes. Debtor stated on oath he paid nothing on account of interest. Art. 146 of the Commercial Code (Art. 189 of French Code) Lyon Caen—Vol. 4, p. 380, para. 440. Art. 450. She made demand to Syndic. The claim was verified P/1, Committee of creditors demanded interest by notary notice, P/1, 14.5.1935. P/1.

3. Making demand for principal which was confirmed by Juge Commissaire. This was judicial demand. Notice by committee of creditors for interest.

4.) Res Judicata claim admitted by Juge Commissaire, judgment
5.) in Civil Case 185/1937. Hailsham, Halsbury, Vol. , pages 409, 410, para. , Phipson, page 406.

Same point, same facts and circumstances to constitute res judicata. Phipson, page 407, 409, Spencer Bower, page 115, Section 177, page 119, Section 184, page 121, Section , page 117, Section 181. Civil Appeal 12/1936. Civil Appeal 234/40. Case 183/1937, Statement of Claim D/5. Defendant relied on Article 153 of Commercial Code. Court upheld his contention. Liability of Defendant personally did not arise at that time. Syndic represents masse and bankrupt in so far as interests of masse are concerned. Lyon Caen, Vol. 7, page 470, Arts. 423, 424, Othman Sultan, p. 323. Personal liability of Defendant was not touched upon and is not res judicata. Nowhere in law to say that interest is not to be paid.

Adjourned for to-morrow.

In the District Court, Haifa.

No. 13.

Proceedings —*continued*, 4th February 1944.

No. 13.

4 February 44.

Mr. Margolin, Wadih Eff., Mr. Sanders, Elias Eff.

Mr. Margolin reduces claim to LP.1,324.177 mils as per account which he now produces.

Defence : no interest is due—protest—prescription—res judicata.

Civil Case 183/1937 issue of interest 4th issue. Question of protest is res judicata in Civil Case 183/1937.

Alternatively the promissory note—nowhere in the Commercial Code for provision to pay interest.

Art. 141 of Commercial Code. This repealed by Bills of Exchange (Protest) Ordinance, 1924. Appendix to Commercial Code—Arts. 91 to 100 of the Amendments to the Commercial Code. Interest is compensation for loss of use of debt. He must ask for the debt. Plaintiff asked for the debt, in 1933, and confirmed in 1934, D/1, D/2, D/3.

Demand from debtor was made from Syndic. Action in Court. Production of bill to Syndic renders the bankrupt liable for interest. Prescription runs as from the closure of the bankruptcy.

Vol. 7, Lyon Caen, pp. 574, 575 } handing of bill to Syndic is
Articles 541 bis } same as protest.

Page 291 to 294, note 2, Arts. 271, 272, 273, Article 153 of Commercial Code. The Defendant resisted being joined in Civil Case 183/1937. Now he insists that the action has prescribed. Interest on interest, Art. 100 of Appendix. It is a commercial matter.

Prescription in five years.

Issue 7—LP.272.475 mils not yet received. Might have been withdrawn. Interest on LP.2,052.475 mils from 27.10.1930 to the dates of the respective payments. Art. 13 of the Commercial Code—Judgment of adjudication, P.L.R., p. 550.

Civil Appeal 120/1940.

Issue 8, Evidence of Aziz, bankrupt. French jurists. There was not an order by Court as to payment of the money.

Judgment reserved.

(Sgd.) AARON SHEMS,
Judge.

7 March 44.

Wadih Eff. Atallah, Mr. Margolin, Mr. Sanders, Mr. Catafago.

Judgment read in open Court.

This 7th March, 1944.

(Sgd.) AARON SHEMS,
Judge.

No. 14.

JUDGMENT.

In the District Court, Haifa.

No. 14. Judgment, 7th March 1944.

Civil Case No. 181/1943.

IN THE DISTRICT COURT OF HAIFA.

Before Their Honours Judge AARON SHEMS and Judge NASR.

In the Case of :

MARY KHAYAT - - - Plaintiff

v.

1. NASRALLAH SALIM KHOURY
2. NASRALLAH SALIM KHOURY, on behalf of the heirs of Youssif Salim Khoury - Defendants.

JUDGMENT.

1. This is a claim for interest on promissory notes.

2. In her Statement of Claim the Plaintiff states that the firm S. N. Khoury was declared bankrupt on 27th October, 1930 and that the " bankruptcy proceedings were closed in July, 1940, after provision had been made for the payment of all debts and interest thereon up to the date of the adjudication of the bankruptcy." The " Plaintiff claimed from the Syndic in Bankruptcy of the said firm the amount of Two thousand three hundred and forty-seven Turkish Gold Pounds as per three promissory notes " :

(1) for 2,000 Turkish Gold Pounds, maturing on 23.5.1930 ;
(2) for 300 Turkish Gold Pounds maturing on 23.5.1930 ; and
(3) for 47 Turkish Gold Pounds maturing on 21.10.1929.

" Owing to disagreement Plaintiff instituted proceedings in the District Court of Haifa against the said Syndic in respect of these three notes. The claim included interest up to the 27th October, 1930, but Plaintiff reserved her claim for the interest due and due accruing after the date of adjudication of Bankruptcy. The case went on appeal to the Supreme Court and eventually to the Privy Council. As a result Plaintiff was awarded interest up to the 27th October, 1930 but both the Supreme Court, and the Privy Council reserved to the Plaintiff her right to sue under Article 305 of the Ottoman Commercial Code for interest due on the amount of the promissory notes after the date of adjudication of bankruptcy. The principal due under the judgment of the Privy Council is LP.2,052.473 mils." From this amount the sum of LP.1,780 was paid in the following manner :—

LP. 60 on 18.8.1934
LP. 20 on 9.9.1934
LP.200 on 21.12.1935
LP.200 on 16.3.1936
LP.200 on 19.1.1937
LP.100 on 9.7.1937.
LP.100 on 2.9.1937
LP.900 on 23.9.1937.

In the District Court, Haifa.

No. 14. Judgment, 7th March 1944, *continued.*

" Interest due on LP.1,780 since 27.10.1930 up to the respective dates of payment stated above, and interest due on LP.272.475 mils from 27.10.1930 to 1.8.1943 make in whole LP.1,414.784 mils."

3. During the proceedings counsel for Plaintiff amended this figure to read LP.1,324.177 mils, and subsequently to LP.1,324.122 and reduced the claim to this amount.

4. The Plaintiff alleges further in her Statement of Claim that " at the time of the closing of the Bankruptcy considerable assets remained undistributed and were handed over to the Defendants without satisfying interest due after the adjudication of Bankruptcy," and that " the firm as well as its members and or their heirs are jointly and severally liable for all interest up to the date of payment."

5. The Plaintiff requests in this action that " judgment be given for the amount of interest claimed as well as for interest due after the filing of the action up till date of payment together with costs, advocate's fees, and that an order be made confirming the provisional attachment on the money due to Defendant in Execution file 121 of 1942."

6. In their defence the Defendants contest the right of the Plaintiff to claim interest from them at this stage and submit that " neither the Supreme Court nor the Privy Council could reserve a right unto the Plaintiff to sue for interest pursuant to Article 305 of the Ottoman Commercial Code. The said Article 305 gives Plaintiff no right to sue for interest, it merely reserves certain rights unto Plaintiff in the event of Defendant applying for his rehabilitation."

7. The Defendants further deny the amount of interest claimed from them and submit that the Plaintiff had withdrawn the sum of LP.272.375 mils, which was paid into Court " without the knowledge of Defendant and contrary to law and procedure."

8. The Defendants further deny the right of the Plaintiff to claim interest on her claim, and contend that this interest is " interest upon interest " and " is in any case not recoverable."

9. The Defendants further raise the following points in defence of the action :—

" (a) The Statement of Claim discloses no cause of action.

" (b) The Plaintiff did not protest the said promissory notes, so that no interest whatsoever is payable thereon.

" (c) The Plaintiff's cause of action is barred in accordance with Article 146 of the Ottoman Commercial Code, more than five years having elapsed from

(i) due date

(ii) date of last payment.

" (d) Prior to the Statement of Claim in the said Civil Case 183/37 Plaintiff never claimed interest and never made any reservation of the rights, if any, to claim interest, either from the makers of the said promissory notes or from the Syndics in Bankruptcy of the said makers. Plaintiff has thereby admitted that no interest is due to her.

" (e) Plaintiff's claim for the principal amount of the said promissory notes was admitted by the said Syndics in Bankruptcy on the 13.4.34, and duly approved and certified by the Judge

Commissaire which admission was duly notified to the Plaintiff. The said admission was not affected by the Plaintiff and no claim in respect thereof was raised in the competent Court, so that Plaintiff is now barred from making her present claim and demanding more than the Syndic and Judge Commissaire adjudged her. The matter is therefore ' Res Judicata.'

" (f) In the said Civil Case 183/37 Plaintiff claimed interest up to date of final payment of the said promissory notes, but the District Court, Supreme Court and Privy Council all dismissed her claim for interest for the period subsequent to the 27th October, 1930. Plaintiff is therefore barred from making her present claim and the matter is res judicata. Such rights as were reserved in the respective judgments in the said Court do not give rise to any cause of action."

10. The Defendants pray " that Plaintiff's case may be dismissed with costs and advocate's fees."

11. The following eight issues were agreed to by the parties :—

1. Whether or not the Statement of Claim discloses any cause of action.

2. Whether or not the cause of action is barred owing to prescription.

3. Whether or not Plaintiff prior to the Statement of Claim in Civil Case No. 183/37 claimed interest or made any reservation for interest from the makers or from the Syndic and if so and if not, is she thereby barred from claiming interest now.

4. Whether or not the admission and confirmation of the Syndic for the original debt without interest due constitutes res judicata against Plaintiff.

5. Whether or not Plaintiff in Civil Case No. 183/37 claimed interest up to date of final payment and whether or not the Courts rejected her claim for interest except till date of adjudication, and the present claim is res judicata.

6. Whether or not Plaintiff can claim interest on interest.

7. What amount of interest is due, if any, and if such interest is due, is it recoverable from the members of the partnership jointly and severally.

8. Whether or not undistributed assets were handed over to the Defendants at the termination of the Bankruptcy proceedings sufficient enough to cover the amount of this claim.

12. On 28th October, 1937, the present Plaintiff filed an action against the Syndics of Bankruptcy of S. N. Khoury (hereinafter called " Syndics " for brevity's sake) and against the present first Defendant and claimed from them jointly and severally the sum of LP.1,722.155 Mils as the balance of the value of three promissory notes made in Turkish Gold Pounds. This action is Civil Case 183 of 1937, District Court Haifa. In her Statement of Claim, Exhibit D/5, the Plaintiff claimed this sum, " with costs, legal interest from the respective dates of maturity of the promissory notes," and advocate's fees.

13. The particulars of the promissory notes are shown in Exhibit D/1, in Section 7 of the Judgment of the District Court Haifa in Civil Case 183/1937 (Exhibit D/12) and in Section 8 of the Judgment in Privy Council

In the District Court, Haifa.

No. 14. Judgment, 7th March 1944, *continued.*

Appeal, 1 of 1942 (Exhibit D/13). They were made in Arabic, and translated they run as follows :—

" 2,000 Ottoman Gold Pounds. Two Thousand Ottoman Gold Pounds only. On 23rd May, 1930 I shall pay in Haifa to the order of Sitt Mary Khayat of Jezeen the sum above mentioned and amounting to two thousand Ottoman Gold Pounds, the value of which I have received in cash. Made in Haifa on 11th October, 1929."

(Sgd.) Nasrallah Salim Khoury.

" 300 Ottoman Gold Pounds. Three Hundred Ottoman Gold Pounds only. On 23rd May, 1930 I shall pay in Haifa to the order of Sitt Mary Khayat of Jezeen the sum above mentioned and amounting to three hundred Ottoman Gold Pounds, the value of which I have received in cash. Made in Haifa on 11th October, 1929."

(Sgd.) Nasrallah Salim Khoury.

" 57 Ottoman Gold Pounds. Fifty Seven Ottoman Gold Pounds only. Ten days after date hereof I shall pay in Haifa to the order of Sitt Mary Khayat of Jezeen the sum above mentioned and amounting to fifty seven Gold Pounds the value of which I have received in cash. Made on 11th October, 1929."

(Sgd.) Nasrallah Salim Khoury.

14. Prior to the institution of her action in this Court in Civil Case 183 of 1937, the Plaintiff applied on the 20th February, 1933 (Exhibit D/1) and on 23rd March, 1933 (Exhibit D/2) to the Syndics to confirm her claim in respect of the promissory notes. The amount of the promissory notes was confirmed according to a certain rate of conversion into Palestine Currency, vide Exhibit P/8, to which the present Plaintiff did not agree (Exhibit D/3). She received certain payments from the Syndic on account of her claim, and in action 183 of 1937 she claimed the balance of the amount according to her mode of conversion.

15. The present first Defendant demurred to the action of the Plaintiff in that he could not be joined as a party in those proceedings, and alternatively contested her claim and her right to interest in the amount claimed, and referred to Articles 153 and 155 of the Ottoman Commercial Code, vide Exhibit P/6.

16. This Defendant was dismissed from the action at an early stage of the proceedings and the action proceeded against the Syndics only.

17. The Syndics admitted liability in the sum of LP.272.375 mils to be due to the Plaintiff and on 13th December, 1937, deposited this amount in Court in her favour, vide Exhibit D/8. The Plaintiff applied to receive this amount, and the Registrar of this Court authorised its payment to her, vide Exhibit D/4.

18. The judgment is document Exhibit D/12. The portions relating to interest are contained in sections 10 and 23. On appeal to the Supreme Court the judgment was confirmed, vide judgment in Civil Appeal 17 of 1940, 7 Palestine Law Reports, page 191. On appeal to the Privy Council it was decided (Section 12 of the judgment in Privy Council Appeal 1 of

1942) (10 P.L.R., page 271) that the present Plaintiff is " entitled to interest from the date of maturity, though the interest will not run beyond the date of adjudication."

19. In the penultimate section of this judgment interest was accordingly awarded with the addition of the statement " without prejudice to any future claim for interest under Article 305 of the Code."

20. The first point to consider is whether the present claim is res judicata.

21. Counsel for the Defendants submit that the question of interest was one of the issues which were raised in the action in Civil Case 183 of 1937. (Exhibits D/9 and D/10) and consequently it cannot be raised at this stage in these proceedings.

22. In order to be res judicata, it is essential that the claim should have been determined in a judgment.

23. The present claim for interest from the date of adjudication *until the dates of the various payments made by the Syndics to the Plaintiff* was not so put in issue in Civil Case 183 of 1937. This is clear from the fourth issue in that case (Exhibit D/9) which was whether the Plaintiff was entitled to any interest and if so, at what rate and from what date or dates. In Civil Case 183 of 1937 it does not appear that the claim of interest from the date of adjudication until the dates of the various payments was raised by the parties, and the main conflict between them was whether the notes were actually promissory notes and what the rate of conversion should be. On appeal to the Supreme Court only these two points were also raised, and the issue of interest was not considered, vide judgment in Civil Appeal 17 of 1940 (7, P.L.R., pages 191 to 195).

24. Secondly, there was no determination by the Court of any claim for interest from the date of adjudication to the dates of the various payments, and there is consequently no bar to the claim being raised at this stage in these proceedings. In order to be res judicata the point should be one which has been determined in the judgment of the Court and has become merged in this judgment. There is no such merger. The remark has been made in Privy Council Appeal 1 of 1942 (Exhibit D/13) that the interest awarded in that judgment was " without prejudice to any future claim for interest under Article 305 of the Code." There was no judgment on all the interests in respect of the promissory notes, and future claims for interest have not been barred by any merger in an earlier judgment.

25. Further, the present Defendants were not parties in that action. The present first Defendant was dismissed from the action at an early stage of the proceedings, and the Syndics who were not responsible for interest beyond the date of adjudication under Article 155 of the Commercial Code represented the masse of creditors and were not privies with the present Defendants in so far as this claim is concerned.

26. For all these reasons the defence of res judicata cannot be maintained.

27. The next question is whether the payment by the Syndics of the amount of LP.272.375 mils (Exhibit D/8) into Court in favour of the Plaintiff, and the authority to pay her this sum (Exhibit D/4) releases the present Defendants from further liability. Counsel for Defendants has

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No. 14. Judgment 7th March 1944, *continued.*

referred to Rules 62 et seq. of the Civil Procedure Rules, 1935 (Supplement 2 to Gazette 582 of 9th April, 1936, page 191).

28. In the first place, it is clear from D/4, that the Plaintiff applied to receive the sum of LP.272.375 deposited in Court by the Syndics in her favour as a result of the judgment in Civil Case 183 of 1937 which was confirmed by the Supreme Court, and not in satisfaction or in settlement of her claim. No notice was given by the Plaintiff to the Defendants through the Court that she accepted that sum in satisfaction of her claim in accordance with the provisions of Rule 65 of those Rules and Form 21, and consequently it cannot now be said that the Plaintiff received this amount in settlement of her claim.

29. Secondly, this sum was not enough to cover what was due to the Plaintiff in accordance with the judgment of the Privy Council 1 of 1942 (Exhibit D/13), where it is stated in the pre-penultimate section of it that " the sum of LP.272.375 mils paid into Court on 13th December, 1937, is not sufficient to cover interest due from dates of maturity to date of adjudication."

30. Thirdly, the Syndics were not liable for interest as from the date of adjudication under Article 155 of the Commercial Code, and no payment could be made by them in respect of such claim.

31. For all these reasons this defence of the Defendants cannot also be maintained.

32. The next point to consider is whether the claim is barred by prescription. Two of the promissory notes became due on the 23rd May, 1930, and the third note was due on the 21st October, 1929. They were all made on 11th October, 1929, the firm S. N. Khoury was declared bankrupt on 27th October, 1930. The Plaintiff received in October, 1929, the sum of LP.10 on account of the promissory note for 57 Turkish Gold Pounds (vide Exhibit D/2). The payments made by the Syndics on account of the claim to the Plaintiff were on various dates from 18th August, 1934, until the 23rd September, 1937. The Syndics paid the sum of LP.272.375 mils into Court on the 13th December, 1937. The Bankruptcy was concluded and closed on 19th July, 1940, and 27th September, 1940.

33. This action was filed in Court on 16th August, 1943.

34. Both parties agree that the period of prescription is five years, as set forth in Article 146 of the Commercial Code.

35. Counsel for Defendants submit that whether the period of five years is counted from the date of maturity of the promissory notes or from the date of the last payments in respect of them, this action was brought after the prescribed period.

36. This claim is for interest because the amounts of the promissory notes were not paid in time. The date of the last payment viz. LP.272.375 mils was on the 13th December, 1937.

It is true that according to the rate of conversion adjudged by the Palestine Courts, the Plaintiff would have been entitled to additional amounts in respect of the promissory notes, but by the judgment of the Privy Council the Plaintiff was only entitled to LP.272.375 and in the absence of other circumstances, the 13th December, 1937, the date of

the last payment, would be the date from which a claim for interest would ordinarily begin to prescribe. But in this case, as the claim is for interest and the present Defendants were bankrupt, the period until the conclusion and closure of the Bankruptcy proceedings on 19th July, 1940, would not be counted. We are guided in this respect by Article 1668 of the Mejelle. In fact, the present first Defendant demurred to the action of the Plaintiff in Civil Case 183/1937 (Exh. P/6) in that he could not be a party to those proceedings because he was bankrupt, and he was accordingly dismissed from the action. He cannot argue now that time has run against the Plaintiff, because on his application he was so dismissed from the action.

37. Secondly, the question whether the payment of LP.272.375 mils on 13th December, 1937, constituted the last payment on the principal amount of the promissory notes was only decided by the Privy Council on 4th May, 1943 (Exhibit D/13) and from that date to the 16th August 1943, the quinquennial period of prescription has not lapsed.

38. Thirdly, the present first Defendant admitted on oath to Counsel for Plaintiff that he has not paid anything on account of interest, and consequently the claim has been taken out from the limitations of Article 146 of the Commercial Code.

39. For all these reasons the pleas of prescription cannot also be maintained.

40. The next point is whether the promissory notes should have been protested.

41. Article 141 of the Commercial Code provides that the interest payable on a bill is calculated from the date of protest. Article 99 of the Appendix provides that "if an acknowledgment of debt contains no stipulation as to interest, the interest on such debt shall be computed from the date of the protest if any has been made, or in default of protest, from the date of the fiat referring the petition to the Court." Article 119 of the Code provides that "Where payment of the bill of exchange is refused at maturity, such refusal shall be recorded the day following the maturity by means of a document called protest; if that day be a legal holiday, the protest shall be made on the following day."

42. The Bills of Exchange (Protest) Ordinance 31 of 1924 provided that a negotiable instrument would not be protested on a Friday, Saturday and Sunday, or on any legal holiday, but "protest shall be made on the Monday or the day following the legal holiday"; and "notwithstanding the provisions of Article 112 of the Code of Civil Procedure and of Article 141 of the Commercial Code, the interest payable on a bill of exchange dishonoured by non-payment shall be calculated from the date of maturity of the bill." This Ordinance has been repealed by Section 96 of the Bills of Exchange Ordinance, 47 of 1929.

43. The Bills of Exchange Ordinance, 47 of 1929 was enacted and came into force on 31st December, 1929. Section 58 provides that the measure of damages are the amount of the bill and interest thereon from the time of presentment for payment if the bill is payable on demand, and from the maturity of the bill in any other case and the expenses of protest.

44. It is clear that under the Ottoman Code interest was calculated as from the date of protest and that no claim for interest was entertainable

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No. 14. Judgment, 7th March 1944, *continued.*

without protest (Article 141 of the Code and Article 91 of the Appendix). The effect of the Bills of Exchange (Protest) Ordinance, 31 of 1924 was to allow interest as from the date of maturity, but it still required protest to be made viz. on Monday or the day next following the legal holiday. It did not dispense with protest.

45. None of the promissory notes for which interest is claimed in this action has been protested.

46. The promissory note for Fifty-seven Turkish Gold Pounds was made and became due at the time when Article 41 of the Commercial Code was still in vigour, and consequently it should have been protested if interest is to be claimed on it.

47. As to the other two notes, they were made when Article 141 of the Ottoman Code was in vigour, but became mature after the coming into force of the Bills of Exchange Ordinance, 47 of 1929. Following the judgment of the Supreme Court in Civil Appeal 36/1942 (9 P.L.R. page 367) the law in force at the time the notes were made is the law to be applied. The Bills of Exchange Ordinance, 1929, does not apply to these notes. They were made before this Ordinance was enacted, and there is nothing in the Ordinance to indicate that it has a retroactive or retrospective effect (see in particular pages 370 and 371 of 9 P.L.R.) where the Judgment in Civil Appeal 36/1942 is reported.

48. In these circumstances, and as the law applicable to all the three notes with regard to a claim for interest is Article 141 of the Commercial Code, which provides that the interest payable on a negotiable instrument dishonoured by non-payment is calculated from the date of the protest, and as none of the promissory notes was protested, no interest can be claimed on them.

49. On this ground the claim of the Plaintiff cannot be maintained.

50. Counsel for Plaintiff contends that the submission of the promissory notes to the Syndic was equivalent to protest.

51. His submission is not supported by authority. The notes were filed with the Syndic merely for the purpose of verification of the debt.

52. Counsel for Plaintiff submitted that on 14th September, 1935, the committee of creditors sent a Notarial Notice to the Syndics in which they claim interest in respect of all their claims as from 27.10.1930, until full payment (vide Exhibit P/1).

53. The Syndic was not liable for the payment of interest according to Article 155 of the Commercial Code and it cannot be maintained that this Notarial Notice was equivalent to the protest upon the Defendants as required by Article 141 of the Commercial Code. It is not an effective substitute to the protest upon the Defendants as required by Article 119 which states that: " Where payment of the Bills of Exchange is refused at maturity, such refusal shall be recorded the day following the maturity by means of a document called the ' protest ', if that be a legal holiday the protest shall be made on the following day."

54. The promissory notes should have been duly protested if interest is to be claimed on them.

55. The point as to the applicability of Article 305 of the Commercial Code does not arise in these proceedings inasmuch as the Defendants have

not so far applied for their rehabilitation, and the claim is not based on this fact.

56. As the claim for interest has not been maintained, the question of payment of interest on interest does not call for decision here.

57. The answers to the various issues are as follows :—The Statement of Claim discloses a cause of action. It is a claim for interest on promissory notes which were not paid at maturity. It is true that as the promissory notes were not protested the Plaintiff is not entitled to interest, but the Statement of Claim discloses a cause of action. This is the answer to the first issue.

58. The second issue deals with prescription, and this point has been dealt with at length above. The answer to this issue is that the cause of action has not been barred by prescription.

59. The third issue has been dealt with above, and the Plaintiff did not claim interest or make any reservation for interest from the makers or from the Syndic prior to the filing or the bringing of her claim in Civil Case 183 of 1937, except by notice P/1 on the Syndic, the effect of which has been dealt with above.

60. The verification of the debt by the Syndic and its confirmation is not res judicata. No demand or claim was made from the Syndic for interest, except P/1 above dealt with, and it cannot be held that the confirmation of the debt without interest constituted res judicata. This is the answer to the fourth issue.

61. The Plaintiff claimed interest in Civil Case 183 of 1937, but did not specify that she claimed interest up to the date of final payment. The judgment of the District Court, Haifa, in Civil Case 183 of 1937 and the judgment of the Supreme Court in Civil Appeal 17/1940, and the judgment of the Privy Council in Privy Council Appeal 1/1942 did not reject the claim for interest by the Plaintiff " except till date of adjudication." The present claim for interest is therefore not res judicata. This is the answer to the fifth issue.

62. The sixth issue is whether the Plaintiff can claim interest on interest. As stated above this point is irrelevant in these proceedings and does not call for a decision in this action.

63. The seventh issue is also irrelevant inasmuch as the claim for interest has been rejected. It may, however, be stated that as the three promissory notes were signed by the present first Defendant alone, he would alone be liable for them. The signature of the present first Defendant on the promissory notes is not on behalf of the firm S. N. Khoury, nor on behalf of the second Defendant.

64. The question of joint and several liability is consequently misconceived. This is the reply to the seventh issue.

65. The eighth issue as to the presence of undistributed assets in the hands of the Defendants is also irrelevant. The Plaintiff's claim for interest has been rejected.

66. In the result and for the above reasons the Plaintiff's claim is dismissed with costs, to include Advocate's fees for instruction and attendance fixed at an inclusive figure of LP.50, LP.25 to each Advocate.

In the District Court, Haifa.

No. 14. Judgment, 7th March 1944, *continued.*

67. The order of provisional attachment made by the Registrar on 14.8.1943, is hereby set aside.

I agree.

(Sgd.) NASR, Judge. (Sgd.) A. SHEMS, Judge.

Given this 7th day of March, 1944, in presence of Messrs. P. Margolin and W. Attallah for Plaintiff and of Messrs. Sanders and Catafago for Defendants.

In the Supreme Court, sitting as a Court of Appeal.

No. 15. Notice and Grounds of Appeal, 31st March 1944.

No. 15.

NOTICE AND GROUNDS OF APPEAL.

Haifa, 31st March, 1944.

IN THE SUPREME COURT.
Sitting as a Court of Appeal, Jerusalem.

Civil Appeal No. 129/44.

In the Appeal of :

MARY KHAYAT represented by P. Margolin, Michael Attallah ,and Wadie Attallah, Advocates, whose address for service is c/o M. Eliash, Advocate, Assicurazioni Generali Building, Princess Mary Avenue, Jerusalem — Appellant

vs.

1. NASRALLAH SALIM KHOURY
2. NASRALLAH SALIM KHOURY on behalf of the heirs of his late brother YOUSSIF, represented by W. Sanders and F. Catafago, Advocates, Haifa — Respondents.

Appeal from the Decree of the District Court, Haifa, dated 7.3.44 in Civil Case No. 181/43.

NOTICE AND GROUNDS OF APPEAL.

1. This is an appeal against the judgment of the District Court, Haifa, dated 7th day of March, 1944, dismissing the claim of Plaintiff for interest on certain promissory notes as from the date the Respondents were adjudged bankrupt to the date of respective payments settling the principal due under the said notes.

2. Appellant will be represented before Court by Messrs. P. Margolin, M. Attallah and W. Attallah, and the address for service will be c/o : M. Eliash, Advocate, Assicurazioni Generali Building, Princess Mary Avenue, Jerusalem.

Herewith attached three copies of the Decree, Application under Rule 327 of the Civil Procedure 1938, Notice under Rule 328 (II) of the

Civil Procedure Rules, 1938, Declaration under the Defence Regulations and Application under Rule 5 of the Courts Ordinance, 1940.

3. Respondents raised numerous points of Defence in the Court below; the Court dealt in detail with all these points and ruled against Respondents on all points, but one, which point became fatal to the case of Plaintiff.

The Court dismissed the case of Plaintiff on the ground that the bills in question were not protested as required under the provisions of Article 119 of the Commercial Code. The Court also ruled that Respondent cannot be sued on behalf of the Estate of his late brother, Youssif.

4. Against the above judgment this present appeal is made on the following grounds :—

(A) The question whether the bills concerned are bearing interest, and from what date—was put in issue in case No. 183/37 (Issue No. 4). There is no doubt that in that respect and in regard to this point the Syndic is a privy with Respondent and any judgment issued against the Syndic of the Bankruptcy must be considered as binding on Respondents. A judgment was given in Civil Case 183/37 to the effect that the said promissory notes are bearing interest as from the date of maturity, and this judgment was confirmed on appeal by the Supreme Court and subsequently by the Privy Council.

The point in issue in the present case is only in respect of the continuation of the liability *as from the date of adjudication* up to the final payment. In my submission the first point has been finally decided as between the parties and cannot be put in issue again. As a matter of fact the point of failure to make protest was not even put in issue, while issues were framed.

(B) Further the Court erred in its interpretation of the Bills of Exchange (Protest) Ordinance, 1924 ; *Section 3 of this Ordinance clearly lays down that interest on any unpaid bill shall be calculated from the date of maturity.* There is no ground whatsoever for the attempt of Respondents' Attorney to link it up with the provisions of Section 2 of the same Ordinance, and make both sections inter-dependent, so as if a protest under Article 119 of the Ottoman Commercial Code is a condition precedent to the right of claiming interest.

(C) Should the Court disagree with my above contention and accept the argument of Respondents on this point—then Article 91 of the Appendix to the Commercial Code has to be applied ; this Article must be read in conjunction with Article 92 of the Appendix to the Commercial Code, as to the character of protest or notice required in order to entitle a Plaintiff to demand interest. In such case the presentment of claim to the Syndic and its admission by him—must be considered sufficient notice in the terms of Art. 92 of the Appendix to the Commercial Code.

Alternatively, the protest dated 14th September, 1935, is certainly sufficient notice under Art. 92 of the Appendix to the Commercial Code.

In the Supreme Court, sitting as a Court of Appeal.

No. 15. Notice and Grounds of Appeal, 31st March 1944, *continued.*

(D) In addition, Protest or notice required under the provisions of the Appendix to the Ottoman Commercial Code or under the Ottoman Civil Procedure, in order to entitle a Plaintiff to claim interest *must not contain a demand for interest or a warning that damages or interest will be claimed*, it is sufficient to make a demand for the fulfilment of obligations or for the payment of the principal only.

(E) The evidence of Judge Aziz Bey Daoudi, the Judge Commissaire, that a demand for payment of interest as from the date of adjudication, was made and this demand was discussed and admitted by Respondents—is sufficient evidence that such demand as is required to entitle a Plaintiff to demand interest—was actually made and notified to Respondents.

(F) Ottoman and Palestinian law on the point in issue is quite clear and exhaustive. Such extracts from French authorities as filed by Respondents in the last hearing in Court are far from being exhaustive and do not represent the French law in force on some of the relevant points in issue.

5. Appellant reserves his right to submit arguments on other points of the Defence should any of these points be raised by Respondents by the way of cross-appeal or by the Court on its own Motion.

6. Prayer is therefore respectfully made that this appeal be allowed and judgment be given in favour of Plaintiff as applied in the Statement of Claim or in such terms as the Court may think just in the circumstances of the case, with costs.

(Sgd.) P. MARGOLIN,
for Appellant.

No. 16. Judgment, 14th February 1945.

No. 16.

JUDGMENT.

Civil Appeal No. 129/44.

IN THE SUPREME COURT
Sitting as a Court of Civil Appeal.

Before : Mr. Justice EDWARDS and Mr. A/Justice PLUNKETT.

In the Appeal of :

MARY KHAYAT — Appellant

v.

1. NASRALLAH SALIM KHOURY
2. NASRALLAH SALIM KHOURY on behalf of the heirs of his late brother YOUSSIF — Respondents.

Appeal from the judgment of the District Court of Haifa dated the 7th March, 1944, in Civil Case No. 181/43.

For Appellant : Mr. Anton Attallah and Mr. Pinhas Margolin.

For Respondents : No. 1—Mr. A. Levin and Mr. E. Catafago.
No. 2—Mr. W. Sanders.

JUDGMENT.

This is an appeal from a judgment of the District Court of Haifa, dismissing an action by the present Appellant for interest on certain

promissory notes. The matter has already been the subject of previous litigation culminating in Privy Council Appeal No. 1/42, P.L.R. Vol. 10, p. 271. Eight issues were framed in the District Court, which delivered a careful judgment extending to fifteen typewritten pages, prepared by Judge Shems and concurred in by Judge Nasr, who decided in favour of the Appellant on all points except one, namely, the effect of the non-protest of the bills of exchange. It was admitted that the bills of exchange had not been protested. The Advocates appearing for the Respondents have, as they were entitled to do without filing a cross-appeal, attacked those parts of the judgment which were not in their favour. We have listened to lengthy arguments on questions of res judicata, prescription, privity of parties and other matters, and the Advocates for both parties have cited many authorities and text-books in different languages on both the Ottoman Commercial Code and on the French Commercial Code. I am, however, of opinion that it is unnecessary for us in this Court to discuss these matters. I think that the District Court came to a correct conclusion on all the matters before them, and no useful purpose would be served by my adding in any way to their judgment as I consider that their reasons also are sound.

The only matter on which I have some doubt is the question of res judicata and the effect of the words in the Judgment of Their Lordships of the Judicial Committee, namely :

> " This judgment to be without prejudice to any future claim for interest under Article 305 of the Code."

On the whole, however, I think that we must not read into that judgment any suggestion that it was intended to debar the present Appellant from bringing any action against Nasrallah Khoury personally, even although Nasrallah Khoury did not take—and it is admitted that he has not taken—action under Article 305 of the Ottoman Commercial Code. It is, however, desirable that I should deal at greater length with the effect of non-protest. I consider that all reference to Article 141 of the Ottoman Commercial Code and to the Bills of Exchange (Protest) Ordinance, 1924, is irrelevant because these statutory provisions of law apply only when there has been a protest. In my view the relevant provisions of law are Articles 91 and 92 of the Addendum to the Ottoman Commercial Code. It is admitted that no protest or other similar official document was ever served on Nasrallah Khoury as required by Article 92 of the Addendum. It was strenuously argued by Mr. Margolin and Mr. Attallah that the claim which they presented to the Judge-Commissaire and to the Syndic was a " demand in justice " and as such, a compliance with Article 92. Whatever force that demand may have had as against the Syndic and the Judge-Commissaire, I do not think it can be said to be binding in these proceedings against Nasrallah Khoury himself.

After all the Appellant cannot have it both ways. She succeeded in convincing the Court below that there was no privity and that there is no res judicata and also that the bills were not prescribed. Why has she succeeded on all those grounds ? Simply because she convinced the Court that the Syndic and Nasrallah Khoury himself were two entirely different legal persons or legal entities. It is therefore quite illogical and unreasonable for her now to rely on the demand addressed to the Syndic as being equivalent to the official document which had to be served on Nasrallah

In the Supreme Court, sitting as a Court of Appeal.

No. 16. Judgment, 14th February 1945, *continued.*

Khoury himself as required by Articles 91 and 92. I accordingly agree with the reasoning of the District Court in paragraphs 51–54 at page 13 of their judgment, and in particular with the remarks with regard to Article 119 of the Ottoman Commercial Code.

For all these reasons I would dismiss this appeal with one set of costs to be taxed on the higher scale and to include an advocate's attendance fee at the hearing of LP.25.

Delivered this 14th day of February, 1945.

I concur.

(Sgd.) O. PLUNKETT,
A/British Puisne Judge.

(Sgd.) D. EDWARDS,
British Puisne Judge.

No. 17. Application and Order granting Conditional Leave to Appeal to His Majesty in Council.

No. 17.

APPLICATION AND ORDER for granting Conditional Leave to Appeal to His Majesty in Council from the Judgment of the Supreme Court sitting as a Court of Civil Appeal in Civil Appeal No. 129 of 1944, dated 14th February 1945.

[*Not printed.*]

No. 18.

No. 18. Order granting Final Leave to Appeal to His Majesty in Council, 13th July 1945.

Order giving Final Leave to Appeal to His Majesty in Council.

Privy Council Leave Application No. 8/45.

IN THE SUPREME COURT
Sitting as a Court of Civil Appeal.

Before : Mr. Justice EDWARDS.

In the Application of :

MARY KHAYAT - - Applicant

v.

1. NASRALLAH SALIM KHOURY
2. NASRALLAH SALIM KHOURY on behalf of the heirs of his late brother YOUSSIF Respondents.

Application for final leave to appeal to His Majesty in Council, from the judgment of the Supreme Court, in Civil Appeal No. 129/44, dated 14.2.45.

For Applicant : Mr. P. Margolin.
For Respondents : Mr. E. Catafago.

ORDER.

It seems to me that by furnishing a Bank guarantee " effective for a period of two years from 3rd July 1945 " the Applicant has complied with the order of this Court of 10th April, 1945. Final leave to appeal to His Majesty in Counsel is granted.

Given this 13th day of July 1945.

(Sgd.) D. EDWARDS,
British Puisne Judge.

EXHIBITS.

Exhibits and Documents.

D.1.

LETTER from the Appellant Mrs. Mary Khayat to the Syndic in the Bankruptcy.

D.1. Letter from the Appellant Mrs. Mary Khayat to the Syndic in the Bankruptcy 20th February 1933.

(Translation from the Arabic.)

Saida, 20th of February, 1933.

To the Syndics of the Bankruptcy of Salim Nasrallah Khoury, through the President of the District Court of Haifa, through the President of the Tribunal of South Lebanon.

APPLICANT : Mary Khayat—Saida.

Sir,

I received your letter dated 14th of February, 1933. You say that the former Syndic did not approve my application for the amount of LP.2,112.200 in the Bankruptcy of Salim Nasrallah Khoury and you allege that this happened because I did not appear and did not produce the original documents and you say that I have to come personally to Haifa or to empower someone to appear before the Syndics and produce the original documents and to demand the approval of my application and in case you do not hear from me in this respect, the Syndic will refuse my application as prescribed by law.

At the appointed time on that date I appeared and produced the original bill to the Syndics and I received a certified copy thereof which copy was certified by the Notary Public, Haifa, and I produced such bills and I have in hand a receipt signed by the Syndic, Mr. Ibrahim Sahyoun. The amount claimed from Mr. Salim Nasrallah Khoury is 2,347 Turkish Gold Pounds as per

(a) Promissory notes signed by Nasrallah Salim Khoury to my order dated 10th of October, 1929, maturing on 23rd May, 1930, for the amount of 300 Ottoman Gold Pounds.

(b) Another promissory note signed by Nasrallah Salim Khoury to my order dated 11th October, 1929, maturing on 23rd May 1930.

(c) A third promissory note signed by Nasrallah Salim Khoury to my order dated 11th October 1929, maturing on the 21st October 1929.

This amount is due in Ottoman Gold Pounds and not LP.2,112.300 which you mentioned.

I am ill since that date and this debt has weakened my body and my heart. I have kept this amount to meet emergencies of this kind and for my livelihood. The delay in reimbursing this debt has compelled me to sell my personal effects and a claim for rent may be lodged against me and many other traders may institute actions against me as I owe them for necessaries.

I am now ill ; it is difficult for me to make a journey to Palestine and if the production of the certified copies of the notes to the former Syndic, after I had shown him the original documents is deemed insufficient

Exhibits and Documents.

D.1. Letter from the Appellant Mrs. Mary Khayat to the Syndic in the Bankruptcy 20th February 1933, *continued.*

and if you think that I may produce certified photographic copies of the notes, I will do so ; if you do not think it is sufficient I have no alternative as I do not dispose of any means to pay to an attorney and my health does not permit me to make the journey as stated above. But if Mr. Nasrallah Khoury, God forbid, denies the debt and the law requires my presence in order to produce the original documents, I pray to inform me and happen what may I shall come.

Awaiting your reply,

20th of February, 1933. (Sgd.) MARY KHAYAT.

After registration,

To His Honour the President of the District Court Haifa.

Please deliver this application to the Syndic of the Bankruptcy of Messrs. Salim Nasrallah Khoury & Sons and return the notice of summons duly served.

20th February, 1933.

President of the Court
of the First Instance
South Lebanon.

D.2. Letter from the Appellant Mrs. Mary Khayat to the President, District Court, Haifa, 23rd March 1933.

D.2.

LETTER from the Appellant Mrs. Mary Khayat to the President, District Court, Haifa.

(*Translation from the Arabic.*)

His Honour
The President of the District Court
Haifa.

Through the President of the Court of First Instance,
South Lebanon, 24th of March, 1933.

Sir,

I received today a letter from the Secretary of the Bankruptcy of Salim Nasrallah Khoury & Sons dated 20th March, 1933, informing me that it was decided to confirm the amount of Two thousand and fifty-two Palestine Pounds and 375 Mils as a provisional debt in my favour which will be finally considered if I send the original promissory notes or photostatic copies certified by the Notary Public, Saida.

I was surprised at the sum fixed, as it is incorrect. The amount claimed by me is Two thousand three hundred and forty-seven Ottoman Gold Pounds and not LP.2,052.375 mils as the Secretary of the Bankruptcy has mentioned. The receipt from Ibrahim Eff. Sahyoun, the former Syndic, which is in my possession, corroborates that he received from me three bills which amount to Two thousand three hundred and forty-seven Ottoman Gold Pounds. I prepared a photostatic copy of the said receipt

D.2. Letter from the Appellant Mrs. Mary Khayat to the President, District Court, Haifa. 23rd March 1933, *continued.*

and attached it to the photostatic copies of the bills attached to this application, and naturally the amount was recorded in the books of the Syndic according to the said receipt as law and justice require.

Sir,

At present I am in possession of the three bills and I enclose herewith, as requested, certified copies which had been authenticated by the Notary Public, Saida, amounting to Two thousand three hundred and fifty-seven Ottoman Gold Pounds. I received on account ten Palestine Pounds only in October 1929 as is shown on the back of the promissory note in the amount of 57 Ottoman Gold Pounds. How can the Syndic say therefore that he confirmed to me the amount of LP.2,052. & 75 Mils (Palestine money) as the promissory notes in my possession are in Ottoman Gold Pounds ?

Now, I enclose herewith four documents as follows :

Number	
1	photostatic copy of the promissory note of Two-thousand Ottoman Gold Pounds certified by the Notary Public, Saida, dated 23rd of March, 1933, under No. 321
1	photostatic copy of the promissory note of fifty-seven Ottoman Gold Pounds certified by the Notary Public, Saida, dated 23rd of March, 1933, under No. 322
1	photostatic copy of the promissory note of three hundred Ottoman Gold Pounds certified by the Notary Public, Saida, dated 23rd of March, 1933, under No. 323
1	photostatic copy of the receipt of 2347 Ottoman Gold Pounds certified by the Notary Public, Saida, dated 23rd of March, 1933, under No. 324.
4	Four documents only.

I pray from Your Honour :

1. To confirm my debt finally because I complied with all the formalities of the law incumbent upon me.

2. To confirm that the debt is 2347 Ottoman Gold Pounds and not LP.2,052.75 Mils as stated in the Syndic's letter dated 20th of March, 1933.

3. Please deliver this application with the four photostatic copies described above to the said Syndic and send me a receipt from him for the said documents.

23rd of March, 1933. (Sgd.) MARY KHAYAT.

To : His Honour
The President of the District Court
Haifa.

Exhibits and Documents.

D.3.

LETTER from the Appellant Mrs. Mary Khayat to the Syndic in the Bankruptcy.

D.3. Letter from the Appellant Mrs. Mary Khayat to the Syndic in the Bankruptcy 19th April 1933.

(Translation from the Arabic.)

To the Syndic of the Bankruptcy of the firm
Salim Nasrallah Khoury Haifa, Palestine
Through
His Honour the President of the First Instance, Lebanon
Through
His Honour the President of the District Court Haifa.

I have received your letter dated 15.4.33 informing me of the receipt of my letter dated 23.3.33. You said " the law requires to convert the amount of my debt from the Turkish Gold money to the current money of the country where the bankruptcy took place on the basis of the current exchange (Cambio) on the date of the maturity of the debt."

Whereas my debt became due on 21.10.29 and 23.5.30, at that time the conversion was on the basis of 100 = 87½.

Therefore the conversion of my debt would be as follows :—

Ottoman Gold Pounds 2357 on the basis of 87½ is equivalent to	LP.2,062.375 mils
The amount received on account of the promissory note of LP.57	10
	LP.2,052.375 mils

and you conclude that this is the amount which was confirmed in my favour, etc.

In reply thereto I say that no law in the world obliges to convert the debt of the creditor fixed in gold money at less than its value on the date of payment.

Logically, it cannot be otherwise : because if the value of Gold increases or decreases the debt in Gold money shall be paid according to the value of the current exchange (Cambio) on the date of payment and less than that.

Therefore I object to the decrease in value of the Turkish Gold Pound and to convert it, as you have mentioned into Palestine Pounds on the basis of the current exchange (Cambio) on the date of the maturity of the debt. I persist in demanding my debt in gold at the rate of exchange (Cambio) on the date of payment. I think that if the value of gold would increase to a very great extent on the date of payment, the debtor would not say to the creditor : I want to compensate you for the loss which you have sustained through the difference in the rate of exchange on the date when the debt was contracted and the date of its maturity.

The value is taken into consideration on the date of payment and not on the date of the contraction of the debt or its maturity.

The amount of the bills in my possession is in Turkish Gold Pounds and the receipt I took from the Syndic reads that the amount is in Turkish

Gold Pounds and the debt due to me by the firm Salim Nasrallah Khoury is in Gold money.

It has therefore to be paid to me in Gold money or in Palestinian or Egyptian money on the basis of the current exchange (Cambio) on the date of payment.

I expected to be treated well by the Syndic and the debtors Messrs. Khoury because I am a widow, poor and deaf. I saved this amount and I have no help except God and this amount on which I rely for my support. I hope that the Syndic will not compel me to bring an action against the bankruptcy to prove my debt on Gold basis.

Please inform me of the receipt of my reply.

19th April, 1933. (Sgd.) MARY KHAYAT.

To His Honour
The President of the District Court
Haifa.

President of the Court of First Instance
South Lebanon.

Signed on Stamps.

Exhibits and Documents.

D.3. Letter from the Appellant Mrs. Mary Khayat to the Syndic in the Bankruptcy 19th April 1933, *continued.*

P.3.

ENDORSEMENT by the Judge-Commissaire of the Application of Mr. Attallah.

(Translation from the Arabic.)

In fact, the position of the estate is very good so that it is possible in a very short time for the estate to settle all claims in full.

Moreover, a residue of not less than LP.100,000 would remain for the bankrupts. I respectfully forward this to the Honourable Commercial Court to order accordingly.

(Sgd.) AZIZ DAOUDI,
Juge-Commissaire.
5.9.1935.

P.3. Endorsement by the Judge-Commissaire of the Application of Mr. Attallah, 5th September 1935.

Exhibits and Documents.

P.1. Notarial Notice, 14th September 1935.

P.1.

NOTARIAL NOTICE.

(Translation from the Arabic.)

NOTICE.

Through the Notary Public, District Court, Haifa.

(1) A copy to the Trustee in the Bankruptcy of the firm Salim Nasrallah Khoury, at Haifa.

(2) A copy to the Syndic in the Bankruptcy of the firm Salim Nasrallah Khoury, at Haifa.

We, the undersigned, the creditors and representatives of the creditors of the Bankruptcy of the firm Salim Nasrallah Khoury, Haifa—

Whereas we have submitted to you three applications of different dates in which it was asked to reserve for us and for the creditors of the bankruptcy the legal interest as from the date of the bankruptcy, i.e., 27th October, 1930, until final payment;

And whereas the assets of the bankruptcy are sufficient to cover the debts with the interest and enough will remain for the bankrupt;

And whereas our request is in accordance with the law;

Therefore we have issued this notice repeating our demands in the previous applications for the payment of the legal interest on all debts claimed as set out above, i.e., as from 27th October, 1930, until final payment.

We submit this notice in three copies for service on the Judge-Commissaire and Syndic and the third copy with evidence of service to be held by us and acted upon when necessary.

Dated this 14th day of September, 1935.

Signed:

1. MICHAEL ATTALLAH
2. VICTOR GERMAIN
3. DR. JIBRAIL ABYAD
4. IBRAHIM SKEILY
5. FARAGH SALTI.

Witness: Illegible. (Sgd.) Illegible.

At the request of Messrs. Faragh Salti and Dr. Jibrail Abyad and Ibrahim Skeily and Michael Attallah and Victor Germain, I serve upon each of you a copy of this notice in accordance with the law.

Dated 14.9.1935.

Notary Public.

(Sgd.) COTRAN.

Fees: LP.1.500 Mils.

24.9.1935.

(Sgd.) Illegible.

Syndic of the Bankruptcy of the firm of Salim N. Khoury.

Exhibits and Documents.

P.1. Notarial Notice, 14th September 1935, *continued.*

Service was effected upon Aziz Bey Daoudi in his capacity as Judge-Commissaire of the Bankruptcy of the firm Salim Nasrallah Khoury and signed on 30th September, 1935, and service was also effected personally upon Mr. Michael Touma in his capacity of Syndic of the firm Salim Nasrallah Khoury, and he received the duplicate and signed it in my presence on 24th September, 1935.

Confirmed.

(Sgd.) Illegible.

Notary Public Haifa.

3.11.1935.

Signed : ZACHARIA KANAN,
Process-Server.

P.4.

P.4. Letter from Chief Interpreter of the District Court, Haifa, to the Judge-Commissaire, 21st October 1935.

LETTER from Chief Interpreter of the District Court, Haifa, to the Judge-Commissaire.

Reference No. DCH/103–2022. District Court, Haifa.

21st October, 1935.

His Honour Judge Aziz Bey Daoudi,
Juge-Commissaire.

Ref. Khoury Bankruptcy proceedings, c/o District Court, Jaffa.

Your Honour,

I am directed to refer to the application made early last month by Mr. Mikail M. Atallah, relative to the payment of the legal interest from the date of the declaration of the above bankruptcy to the date of full payment and in particular to your report rendered on the matter on the 19th ultimo, and to quote for your information, copy of the order made by the Court on the 21st October, 1936 :—

> " The Juge-Commissaire to inform applicant that as the debts of the various creditors have not been settled yet, his application in respect of interest is premature."

2. I am directed to request you to be so good as to make the necessary arrangements for the applicant to be informed accordingly.

I have the honour to be,

Your Honour's Obedient Servant,

(Sgd.) J. M. KAMINITZ,

Chief Interpreter.

Exhibits and Documents.

P.2. Application by Mr. Attallah to the District Court of Haifa, 5th September 1936.

P.2.

APPLICATION by Mr. Attallah to the District Court of Haifa.

(Translation from the Arabic.)

Haifa, 5th September, 1936.

IN THE DISTRICT COURT OF HAIFA
sitting as a Commercial Court,
through
His Honour the Juge-Commissaire of the Bankruptcy
of the firm of Salim Nasrallah Khoury, Haifa.

Petitioner : Michael Mansour Attallah, Advocate, Haifa.

Subject : Decision as to a point of law between Petitioner and the Syndic, in accordance with Article 205 of the Ottoman Commercial Code which allows the reference of such points to the Court without the necessity of lodging a complaint or a claim.

The point of law is :

" Whether or not is a creditor entitled to receive in addition to his approved claim, the legal interest from the date of adjudication of bankruptcy to the date of full payment when it appears that there are sufficient assets in the said bankruptcy to settle the debts plus interest ? "

On 23.6.1930 the legal protest was made by me.

On 28.6.1930 I applied to Your Honourable Court for a Declaration of Bankruptcy of the said firm.

On 27.10.1930 Order of Bankruptcy was issued.

On 14.9.1935 the Committee representing the Creditors (of which I am a member) sent through the Notary Public Haifa a Notarial Notice signed by them under No. 2724 : 890739 to His Honour the Juge-Commissaire as well as to the Syndic for the payment of the legal interest as from the date of Adjudication of Bankruptcy (i.e. 27.10.1930) to the date of full payment. This notice was duly served on them on 24.9.1935.

On 12.11.1935 the Syndic wrote to me as follows :—

" After consultation with the Juge-Commissaire they did not find any legal provision entitling them to consider the interest demanded . . . "

Hence this humble petition setting out the legal provisions compelling the Syndic to pay interest under such circumstances is lodged :

1. Léon Caen and Renault in their comments on Art. 445 of the French Commercial Code, which corresponds to Art. 155 of the Ottoman Commercial Code, say as follows :—

" En outre, si, par extraordinaire, il restait des fonds après que les créanciers ont reçu le capital des sommes qui leur étaient dues, ce reliquat serait appliqué au paiement des intérêts courus même depuis le jugement déclaratif."

In translation :

" Also, if, under extraordinary conditions, there should remain a surplus after the receipt by the creditors of their capital, this surplus will be assigned to the payment of the interest as from the date of declaration of the bankruptcy."

It appears therefrom that there is not even the necessity of taking an order from Court for the payment of the interest, as the Syndic is bound to pay the same of his own accord.

2. Piat in his comment on Art. 155 of the Ottoman Commercial Code says :—

" The object of this Article of law (as regards the cessation of the payment of interest from the date of the adjudication of bankruptcy) is to prevent the payment of interest on big debts so as to avoid the disappearance of all or most of the assets which would necessarily prejudice the minor creditors."

There is no cause for such apprehension, so long as, after the payment of the debts and the interest thereon, there remains to the bankrupt LP.100,000 as stated by the former Syndic in his report purporting to reply to the application submitted to the Court for his replacement. If such is the case, there is no danger that the assets would disappear and the minor creditors would sustain losses as they would be paid their principal and the interest in full.

3. The above submission is supported by the provisions of Articles 249 and 250 of the Ottoman Commercial Code.

A. Article 249 :—

" The holder of promissory notes made by the bankrupt and any persons in bankruptcy jointly liable with him, or the holder of bills indorsed by any persons in bankruptcy who are jointly and severally liable by reason of such indorsement, shall have a share in the dividends from the estate of each of such bankrupts in respect of the whole of his claim, together with interest and costs, and shall be entitled to claim the whole amount due to him."

Osman Sultan in his comments on this article says :—

" . . . and to take his share from the assets of that bankruptcy in proportion to his full claim until he receives his rights in toto plus interest and legal expenses."

If a creditor is entitled to collect his debt with interest from more than one bankruptcy if there is a connection between more than one bankrupt, is he not entitled to collect his debt with interest from one bankruptcy if there are sufficient assets in that bankruptcy to meet all his debts and there remain thousands of Pounds to the bankrupt after payment of all his debts ?

Osman Sultan on page 402 of his comments also says :—

" interest in this Article means the interest for the period between the date of one bankruptcy and the date of the other."

Obviously, Art. 155 of the Ottoman Commercial Code is applicable, i.e. the Article which I have referred to in para. 1 and in respect of which

Exhibits and Documents.

P.2. Application by Mr. Attallah to the District Court of Haifa, 5th September 1936, *continued.*

I have shown expressly when it is applicable and the manner of its application.

B. Article 250 (2) provides as follows :—

> " In the case of the bankruptcy of persons liable jointly with the bankrupt, they shall not be entitled to recover anything from each other in respect of any dividends paid from their respective estates ; but where the amount of the dividends obtained from the estates of such bankrupts exceeds the sum total of the claim together with interest and costs, i.e. if it is more than the amount of the principal and all incidental charges, in such case the excess shall belong, in the order of the signatures appearing on the bill, to such of the joint debtors as are liable by reason of their respective indorsements."

If the amounts collected exceed the total amount of principal, costs and interest, the excess shall belong to their guarantors according to their terms of indorsement, the order of their signatures, namely the signatures of the judgment-debtors as proved by these indorsements. [*sic*]

We find that the express provisions of this Article need no comment as it is definitely provided that the debt with its costs and interest should be paid first, and if there should be an excess the joint guarantors who have been declared bankrupt can share in this excess. What applies to the bankruptcy of a group of persons would apply to the bankruptcy of one person : as in the former case the group of bankrupts cannot share in the assets before the payment of the debt with interest and costs, so also in the bankruptcy of one person the bankrupt is not entitled to receive anything before payment of the debt with interest and costs.

In the light of the aforesaid, I pray that the Syndic be ordered to pay the legal interest from the date of the adjudication of the bankruptcy, i.e. 27th October, 1930, to the date of full payment.

Yours respectfully,

(Sgd.) MICHAEL M. ATTALLAH.

P.12. Letter from the Chief Interpreter, District Court, Haifa, to the Creditors of S. N. Khoury, 13th June 1937.

P.12.

LETTER from the Chief Interpreter, District Court, Haifa, to the Creditors of S. N. Khoury.

By Registered Post.

District Court, Haifa.

13th June, 1937.

DCH/103/-1235.

Gentlemen,

Re : " S. N. Khoury " bankruptcy proceedings.

With reference to your application of the 27th May last, I am directed to inform you that the Court has given the following ruling :—

> " Submit copy to Juge-Commissaire bearing in mind provisions of Article 243 of Commercial Code. Inform Applicants. (Fees to be paid, if any)."

2. The contents of this order were already communicated to Mr. Michael Atallah, Advocate of Haifa, who presented the petition to the Chief Clerk of this Court, on the 8th instant.

Exhibits and Documents.

P. 12. Letter from the Chief Interpreter, District Court, Haifa, to the Creditors of S. N. Khoury, 13th June 1937, *continued.*

I have the honour to be, Gentlemen,

Your obedient servant,

(Sgd.) Illegible,

Chief Interpreter.

The Creditors of The S.N. Khoury Bankruptcy Proceedings,
c/o Mr. Victor Germain,
Haifa.

P.5.

P.5. Ruling by the District Court, Haifa, 12th August 1937.

RULING by the District Court, Haifa.

Civil Case No. 143/37.

IN THE DISTRICT COURT OF HAIFA.

Before : His Honour Judge SHAW, Relieving President, and His Honour Judge A. SHEMS.

IN THE MATTER of the bankruptcy proceedings of the firm "S.N. Khoury."

UPON READING the application of Dr. Weinshall dated 3rd August, 1937, AND UPON HEARING the parties, the Court makes the following orders :—

1. The Bankrupts are entitled to pay to the Syndics the full amount of the verified debts of the various creditors together with Court fees and costs of the bankruptcy proceedings which have been estimated at not exceeding LP.45.000, and upon their giving within three days from this date a Bank guarantee to the Syndics for this amount, whereby the Bank guarantees the payment of LP.45.000 to the Syndics, we direct the Syndics to release the properties of the Bankrupts in their hands and to restitute them to the Bankrupts. In making this order we have had regard to the provisions of Article 107 of the Law of Execution, as there are no rules applicable to the property of minors as referred to in Article 278 of the Commercial Code.

2. The Bankrupts are applying that the whole of the Khreibeh lands be sold and that the sale proceedings which have been carried out by the Syndics in respect of a portion thereof (viz. 1910 dunams) be stayed. We have had to consider whether this wish of the Bankrupts would be detrimental to the interests of the creditors. It has been stated by Dr. Weinshall, and not denied, that the assets exceed the liabilities and so long as the claims of the various creditors are safeguarded, we think that

Exhibits and Documents.

P.5. Ruling by the District Court, Haifa, 12th August 1937, *continued.*

we ought to take into consideration the wishes of the Bankrupts as they are entitled to any surplus after the debts of the estate have been paid. The estate is not liable for the interest due after the date of adjudication (see Art. 155 of the Commercial Code), but the Bankrupts may be sued personally after the Syndics have ceased to act. In the circumstances, we order that the whole of the property of the Bankrupts known as the Khreibeh lands be put up for sale by public auction for a sum not less than LP.85,750. We are very reluctant to direct the Syndics not to proceed with the sale to the Abyad party, but as the assets of the estate appear to exceed the liabilities, and as it is the wish of the Bankrupts that their property in the Khreibeh lands should be sold in one lot, we think it right in the circumstances to give effect to that wish and further there appears to be some doubt whether the sale to the Abyad party would in fact have brought these lengthy bankruptcy proceedings to an end, in view of the claim of Cesar Khoury who says that he is entitled to a one-third share in the Khreibeh lands.

Liberty to apply.

Given this 12th day of August, 1937.

(Sgd.) A. SHEMS, Judge.

(Sgd.) B. V. SHAW, Relieving President.

D.5. Statement of Claim in Civil Case No. 183/37, District Court, Haifa, 27th October 1937.

D.5.

STATEMENT OF CLAIM in Civil Case No. 183/37, District Court, Haifa.

Haifa, 27th October, 1937.

IN THE DISTRICT COURT HAIFA.

Civil Action No 183 of 1937.

MARY KHAYAT, represented by Messrs. J. Kaiserman, and Najib Hakim, Advocates, of Haifa - - - - Plaintiff

v.

1. SYNDICS OF BANKRUPTCY of Salim Nasrallah Khoury
2. MR NASRALLAH KHOURY - - Defendants.

1. The Plaintiff is entitled to receive from the above bankruptcy the sum of 2,347 Turkish Gold Pounds according to the following promissory notes :

(a) Promissory note for the amount of 2000 Turkish Gold Pounds which matured on 23.5.1930

(b) Promissory note for the amount of 300 Turkish Gold Pounds which matured on 23.5.1930

(c) Promissory note for the amount of 47 Turkish Gold Pounds which matured on 21.10.1929.

2. The Plaintiff admits having received the following payments in Palestine Pounds on account of the debt on the dates hereinafter appearing :—

LP. 60.– (Sixty Pal. Pounds	on 18.8.1934
LP. 20.– (Twenty Pal. Pounds)	on 9.9.1934
LP.200.– (Two hundred Pal. Pounds)	on 21.12.1935
LP.200.– (Two hundred Pal. Pounds)	on 16.3.1936
LP.200.– (Two hundred Pal. Pounds)	on 19.1.1937
LP.100.– (One hundred Pal. Pounds)	on 9.7.1937
LP.100.– (One hundred Pal. Pounds)	on 2.9.1937
LP.900.– (Nine hundred Pal. Pounds)	on 23.9.1937

3. The Defendants do not deny the debt but very arbitrarily have converted such debt into Palestine currency at the rate of LP.0.875 to the Turkish Gold Pound.

4. It is most humbly and respectfully submitted that the Plaintiff is entitled to be repaid either in Turkish Gold Pounds or in Palestine currency at the rate of exchange of the Turkish Gold Pound on the dates of the actual payments.

5. In case Your Honourable Court upholds the Plaintiff's point of view, then the amounts paid by the Defendants as stated in paragraph 2 hereof should be converted to Turkish Gold Pounds and the balance owing in Turkish Gold Pounds should be converted into Palestine currency at the rate prevailing at the time of lodging this claim.

6. In order to effect the conversion as aforesaid the Plaintiff attaches an affidavit by Benjamin Cohen, Doctor of Laws, who made enquiries from the local banks in order to ascertain the rate of exchange of Turkish Gold Pounds in Palestine currency on the material dates.

7. From the affidavit it is clear :

(a) That the payment of LP.60.– which was effected on 18.8.1934 is equivalent after conversion at the rate of LP.1.485 per Turkish Gold Pound, to 40.440 Turkish Gold Pounds ;

(b) That the payment of LP.20.– effected on 8.9.1934 is equivalent after conversion at the rate of LP.1.480 per Turkish Gold Pound, to 13.500 Turkish Gold Pounds ;

(c) That the payment of LP.200.– effected on 12.12.1935 is equivalent after conversion at the rate of LP.1.490 the Turkish Gold Pound to 134.295 Turkish Gold Pounds ;

(d) That the payment of LP.200.– effected on 16.3.1936 is equivalent after conversion at the rate of LP.1.485 the Turkish Gold Pound to 134.630 Turkish Gold Pounds ;

(e) That the payment of LP.200.– effected on 19.1.1937 is equivalent, after conversion at the rate of LP.1.465 the Turkish Gold Pound to 134.450 Turkish Gold Pounds ;

(f) That the payment of LP.100.– effected on 9.7.1937 is equivalent after conversion at the rate of LP.1.470 the Turkish Gold Pound to 68.030 Turkish Gold Pounds.

(g) That the payment of LP.100.– effected on the 2nd September, 1937, is equivalent after conversion at the rate of LP.1.473 the Turkish Gold Pound, to 67.888 Turkish Gold Pounds.

Exhibits and Documents.

D.5. Statement of Claim in Civil Case No. 183/37, District Court, Haifa, 27th October 1937, *continued.*

(h) That the payment of LP.900.– effected on 23.9.1937 is equivalent after conversion at the rate of LP.1.463 the Turkish Gold Pound, to 610.975 Turkish Gold Pounds.

The total payments effected are therefore :

	40.440
	13.500
	134.295
	134.630
	136.450
	68.030
	67.888
	610.975
	1,206.208

or in round figures 1,206.500 Turkish Gold Pounds.

8. The amount still due is therefore

	2,347.000 Turkish Gold Pounds
–	1,206.500 Turkish Gold Pounds
	1,140.500 Turkish Gold Pounds

The present local currency rate of the Turkish Gold Pound is LP.1.510.

The balance still due is therefore equivalent to 1,140.500 + LP.1.510 = LP.1,722.155.

Wherefore prayer is hereby humbly made to summon the Defendants to appear before this Honourable Court and to adjudge them jointly and severally to pay to the Plaintiff the amount of the claim, i.e. LP.1,722.155 with costs, legal interest from the respective dates of maturity of the promissory notes as stated in paragraph 1 hereof, and advocates' fees.

(Sgd.) J. KAISERMAN,
Attorney for Plaintiff.

P.6. Statement of Defence in Civil Case No. 183/37, District Court, Haifa, 13th November 1937.

P.6.

STATEMENT OF DEFENCE in Civil Case No. 183/37, District Court, Haifa.

IN THE DISTRICT COURT OF HAIFA.

13th November 1937.

REJOINDER.

MARY KHAYAT of Jezeen, represented by Messrs. Kaiserman and Hakim, Advocates of Haifa - Plaintiff

vs.

1. THE SYNDICS OF THE KHOURY BANKRUPTCY ;
2. Mr. NASRALLAH KHOURY of Haifa, represented by Mr. F. B. Attallah, Advocate, of Haifa Defendants.

This is the defence of Defendant No. 2 rebutting the claim of the Plaintiff for the sum of LP.1,722.155 mils and interest on the following grounds :—

Exhibits and Documents.

P.6. Statement of Defence in Civil Case No. 183/37, District Court, Haifa, 13th November 1937, *continued.*

1. Under Section 153 of the Ottoman Commercial Code, the bankrupt cannot be constituted as a part to proceedings relative to the property debts or credits of the bankruptcy, and as the bankruptcy proceedings were commenced before the promulgation of the Bankruptcy Ordinance, 1936, the introduction of this action against Mr. Nasrallah Khoury who is considered to be still a bankrupt is misconceived and should therefore be dismissed.

2. Alternatively, it is pleaded that the Plaintiff has no ground of action either against the Petitioner herein or against the Syndics of his bankruptcy because the Plaintiff's debt has been recorded by the Syndics and confirmed by the Juge-Commissaire and the Plaintiff recovered her claim on the basis of such records and confirmation and did not until recovery of all the amounts realised contest the figure admitted alleging that there was an improper conversion although the said conversion constituted a part and parcel of the recorded claim. The record and confirmation of the Syndics and Juge-Commissaire amounts to res judicata as will be proved in open Court by overwhelming authority and jurisdiction.

3. Whatever the circumstances of the original claim of the Plaintiff before the Syndics were, the Defendant denies that the Plaintiff holds or ever held the promissory notes described in her Statement of Claim.

4. Again in the alternative it is contended that the conversion effected by the Syndics was right and in accordance with the law in view of the provisions of Section 72 (4) of the Bills of Exchange Ordinance, 1929, which provides that bills of exchange the amount of which is not expressed in Palestine currency shall be calculated according to the rate of exchange on the day the bill is payable.

5. The Plaintiff on the other hand did not quote any authority on which she could rely to obtain a conversion according to the rate of exchange current on the day of actual payment. There is no authority which applies to the circumstances of this case, especially in view of the provisions of the law referred to in the preceding section and in a state of bankruptcy where the amount is expressed in Turkish Gold Pounds which is not legal currency.

6. The Defendant herein contests the right to the Plaintiff to claim any right in the interest of the amount claimed or its original in the case of bankruptcy because it is clearly laid down in section 155 of the Ottoman Commercial Code that all interest on claims from the masse shall cease as from the date of the declaration of the bankruptcy.

7. The Defendant herein reserves his right to put further arguments in open hearing as he may be advised.

8. Costs and Advocate's fees are applied for.

(Sgd.)

Attorney for Mr. N. Khoury

Exhibits and Documents.

P.7.

RULING by the District Court, Haifa, in Civil Case No. 183/37.

P.7. Ruling by the District Court, Haifa, in Civil Case No. 183/37, 26th November 1937.

IN THE DISTRICT COURT, HAIFA.

Civil Case No. 183/37.

Before : Their Honours A. GUY SHERWELL, President, and A. SHEMS, Judge.

MARY KHAYAT, represented by Messrs. J. Kaiserman and Najib Hakim, Advocates of Haifa — Plaintiff

v.

1. SYNDICS OF BANKRUPTCY OF SALIM NASRALLAH KHOURY
2. Mr. NASRALLAH KHOURY - - Defendants.

RULING.

Having regard to the facts of the matter the original action of Plaintiff in joining the second Defendant might be regarded as reasonable—but after the filing of his defence—Plaintiff by his reply thereto, we think has rather unnecessarily insisted upon Defendant No. 2's presence and left this question open till to-day. We therefore think it equitable in circumstances to dismiss the Defendant No. 2 the Bankrupt from these proceedings and award him LP.2.500 costs in all.

Given this 26th day of November, 1937.

(Sgd.) AARON SHEMS, Judge.

(Sgd.) A. GUY SHERWELL, President.

D.6.

STATEMENT OF DEFENCE of Defendant No. 1 in Civil Case No. 183/37.

D.6. Statement of Defence of Defendant No. 1 in Civil Case No. 183/37, 26th November 1937.

IN THE DISTRICT COURT OF HAIFA.

Civil Case No. 183/37.

Between MARY KHAYAT, represented by Messrs. J. Kaiserman and Najib el Hakim, Advocates of Haifa - - - Plaintiff

and

1. SYNDICS OF BANKRUPTCY of Salim Nasrallah Khoury, represented by Mr. H. C. Weston Sanders
2. Mr. NASRALLAH EL KHOURY, Haifa - Defendants.

DEFENCE OF DEFENDANT No. 1.

1. Defendant No. 1 denies para. 1 of the Statement of Claim and the execution or existence of the promissory notes referred to in the said paragraph or the execution by the bankrupt of any promissory notes in favour of the Plaintiff.

2. Defendant No. 1 admits the execution by the bankrupt of the following undertakings :—

(a) Undertaking dated 11.10.29 to deliver to Plaintiff a certain amount of bullion, namely 2000 Turkish Gold Pounds on the 23.5.30.

(b) Undertaking dated 11.10.29 to deliver to Plaintiff a certain amount of bullion, namely 300 Turkish Gold Pounds on the 23.5.30.

(c) Undertaking dated 11.10.29 to deliver to Plaintiff a certain amount of bullion, namely 57 Turkish Gold Pounds on the 21.10.29, balance of 47 Turkish Gold Pounds remaining outstanding.

Copies of undertakings (a), (b) and (c) are attached hereto and marked Exhibits Def.1. I, II and III.

3. Defendants 1 deny any payment to Plaintiffs on account of the promissory notes referred to in paragraph 1 of the Statement of Claim.

4. Defendants 1 admit the payment of the various amounts referred to in paragraph 2 of the Statement of Claim upon the dates therein mentioned, totalling LP.1,780 but say the said amounts were paid on account of the various undertakings referred to in paragraph 2 of this Defence.

5. Defendants deny that the valuation of LP.0.875 to the Turkish Gold Pound is arbitrary or incorrect (referred to in paragraph 3 of the Statement of Claim).

6. With reference to paragraph 4 of the Statement of Claim, Defendant 1 denies that Plaintiff is entitled to be repaid now in Turkish Gold Pounds or in Palestine currency at the rate of exchange of the Turkish Gold Pound on the dates of actual payments.

7. Plaintiff is entitled to be paid in Palestine currency according to the value of the bullion referred to in the said undertakings mentioned in paragraph 2 hereof, at the date each delivery was due.

8. Defendant 1 denies paragraphs 5, 6 and 7 of the Statement of Claim and the rates of conversion therein mentioned.

9. With reference to paragraph 8 of the Statement of Claim Defendant 1 denies :—

(a) that 1,140.500 Turkish Gold Pounds or any Turkish Gold Pounds are still due to Plaintiff.

(b) that the said number of Turkish Gold Pounds is equivalent to LP.1,722.155 mils.

(c) that any interest is due to Plaintiff from the date of maturity of the said promises to deliver the said bullion, or at all.

10. Defendant 1 on 14.3.34, admitted Plaintiff's claim against the Bankrupt Estate for LP.2,052.375, of which amount the sum of LP.272.375 mils remains unpaid. Defendant 1 admits liability therefore to the amount of LP.272.375 but deny all liability for any further sum.

11. The said admission of the 14.3.34 duly approved and certified by the Judge Commissaire and duly notified to Plaintiff was not appealed against by Plaintiff and Plaintiff raised no claim in the Competent Court in respect thereof. Except in so far as in Clause 10 above admitted the said decision of 14.3.34 bars Plaintiff from making her present claim and demanding now more than the Syndics and Judge Commissaire adjudged her. The matter is now " res judicata."

WHEREFORE it is prayed that Plaintiff's claim may be dismissed with costs and advocate's fees.

(Sgd.) H. WESTON SANDERS,

Haifa, 26th November, 1937. Counsel for Defendant 1.

Exhibits and Documents.

D.8.

NOTICE of Payment in Court.

D.8. Notice of Payment in Court, 13th December 1937.

H. C. WESTON SANDERS
Advocate — Haifa

IN THE DISTRICT COURT OF HAIFA.

Civil Case No. 183/37.

Between MARY KHAYAT, represented by Messrs. J. Kaiserman and Najib Hakim, Advocates, of Haifa - - - - - - - Plaintiff

v.

1. SYNDICS OF THE BANKRUPTCY of the firm S. N. Khoury, represented by Mr. H. C. Weston Sanders, Advocate
2. Mr. NASRALLAH EL KHOURY of Haifa — Defendants.

NOTICE OF PAYMENT IN COURT.

Civil Procedure Rules, 1935, Part IX, Rule 62.

To the Plaintiff above,

TAKE NOTICE that the Defendant No. 1 above, the Syndics in Bankruptcy of the Firm " S. N. Khoury " Haifa has paid into Court the sum of LP.272.375 (Palestine Pounds two hundred and seventy-two mils three hundred and seventy-five only) and says that that sum is enough to satisfy the Plaintiff's claim in whole as made in Statement of Claim dated 27th October, 1937. Defendant No. 1 admits liability for the said amount of LP.272.375 mils in accordance with the terms of his defence dated 26th November, 1937, particularly para. 10, thereof.

Haifa, 13th December, 1937.

(Sgd.) H. C. WESTON SANDERS,
Counsel for Defendant 1.

Exhibits and Documents.

D.7.
Reply to the Defence of Defendant No. 1 in Civil Case No. 183/37, 4th February 1938.

D.7.

REPLY to the Defence of Defendant No. 1 in Civil Case No. 183/37.

J. KAISERMAN,
Advocate.

Haifa, 4th February, 1938.

IN THE DISTRICT COURT, HAIFA.

Civil Action No. 183/37.

MARY KHAYAT, represented by Messrs. J. Kaiserman and Najib Hakim, Advocates, of Haifa — Plaintiff

v.

1. SYNDICS OF BANKRUPTCY OF SALIM NASRALLAH KHOURY
2. Mr. NASRALLAH KHOURY — Defendants.

REPLY TO THE DEFENCE OF DEFENDANT No. 1.

1. As to para. 1 of the Defence of Defendants No. 1 the Plaintiff respectfully submits that no evidence was at all produced to establish that the promissory notes were not executed by the bankrupt.

As a matter of fact, the Syndics admit the existence of these notes and they have annexed to their defence three certified copies thereof.

2. As to para. 2 of the Defence of Defendant No. 1 wherein it is stated that Defendant 1 admits the execution by the Bankrupt of three undertakings in which he undertook to deliver to the Plaintiff a certain "amount" of bullion, it is submitted that the Bankrupt executed promissory notes and not undertakings to deliver a certain "amount" of bullion.

The documents executed by the Bankrupt are in law promissory notes.

Such notes were executed before the promulgation of the Bills of Exchange Ordinance, 1929, when the law in force on the subject of Bills of Exchange was the Ottoman Commercial Code. There is no doubt that the documents executed by the Bankrupt fall within the definition of promissory notes contained in Articles 70 and 144 of the Ottoman Commercial Code and also within the definition contained in para. 84 (1) of the Bills of Exchange Ordinance, 1929.

It is submitted that had it been the intention of the Bankrupt to undertake to deliver a certain quantity of bullion he would have at least stated in his so-called undertaking, the exact weight and not the amount of the metal he intended to deliver. In his so-called undertaking the Bankrupt states "I will pay" and not "I will deliver." Delivery and payment have different meanings.

It is submitted that the Defendant has failed to establish the point that these documents constitute undertakings to deliver a certain "amount" of bullion.

Exhibits and Documents.

D.7. Reply to the Defence of Defendant No. 1 in Civil Case No. 183/37, 4th February 1938, *continued.*

3. As to para. 10 of the Defence of Defendant No. 1 the Plaintiff denies having admitted orally or in writing tacitly or by conduct that her claim was LP.2,052.375.

The Plaintiff has at all material times, protested against the arbitrary conversion of the Turkish Gold Pound into Palestine currency at the rate of LP.0.875 per Turkish Gold Pound.

In support of her contention the Plaintiff produces an application submitted by her to the Juge Commissaire of this Bankruptcy, which application was endorsed by His Honour, Judge Aziz Bey Daoudi.

Aziz Bey states in his endorsement that the Plaintiff always protested against the conversion of the Turkish Gold Pound at the rate of LP.0.875 per Turkish Gold Pound.

4. As to para. 11 of the Defence of Defendant No. 1, wherein it is stated that the matter is now res judicata, it is submitted that such statement is wrong in law and in fact.

The local provision with respect to res judicata is Article 1837 of the Mejelle. This Article reads as follows in C. A. Hooper's Civil Law of Palestine and Transjordan :—

> " An action in respect to which a judgment has validly been given that is to say, a judgment which contains the reasons and grounds therefor, may not be heard again . . . "

Another version of the said Article is cited in Civil Appeal No. 12 of 1936 and reads as follows :—

> " It is not permitted to reconsider and hear claims when there is a decision (hikin) and written judgment (ilam) in conformity with the principles of the Sharia Law, i.e. when the conditions and grounds of the Judgment exist."

Young, Corps de Droit Ottoman, Vol. VI, translates as follows :—

> " Il n'est point permis de juger et d'éxaminer à nouveau une cause qui a déjà reçu un jugement conforme à la loi."

It was held by the Court of Appeal in Civil Appeal No. 12 of 1936 that Article 1837 of the Mejelle clearly means that where an action has been followed by a valid judgment setting out the ratio decidendi, then that action cannot be brought again.

In the light of the above it is submitted that Defendant No. 1 failed to establish that this matter is res judicata.

5. As to Defendant No. 1's plea in para. 11 of their defence that the Plaintiff raised no claim against the admission of the Bankrupt, it is submitted that under Art. 205 of the Ottoman Commercial Code, it was the duty of the Juge Commissaire to refer the dispute to the Competent Court. Article 205 reads as follows :

> " Where any of the debts of the bankrupt are disputed, the Juge Commissaire shall without requiring any formal complaint or application refer the matter to the Commercial Court, which may direct that all persons having any knowledge of it be summoned before the Court and the dispute be inquired into by the Juge Commissaire."

6. In the submission of the Plaintiff the only point at issue in this case is whether the Plaintiff is entitled to be repaid in Palestine Currency

at the rate of exchange of the Turkish Gold Pound at the dates of the actual payment or not.

The Court of Appeal held on many occasions that there is no reason to depart from the ordinary rule that sums payable in foreign currency in Palestine have to be paid at the rate of exchange prevailing on the date of payment.

Vide Civil Appeal No. 79/1936.

The Plaintiff will most respectfully cite to this Honourable Court para. 44 of the Judgment delivered by Manning J. in Civil Appeals 70 and 95 of 1936.

> "Menni's next claim is with regard to salary. From the end of May until the date on which he retired he was paid a monthly salary of LP.20.700 mils. He says that this was incorrect and that his monthly salary was Ltqs.23, 23 Turkish gold pounds, and that if this was paid to him in local currency, it ought to have been converted into local currency at the appropriate rate on the date of each payment. If this had been done he would have received more than LP.20.700 mils each month, and he now claims for the difference. In accordance with my previous findings, this claim is well founded. The Bank however, relies on certain documents which it says effectually dispose of any claim of Menni to arrears of salary."

Wherefore prayer is made to adjudge the defendants to pay to the Plaintiff the amount of the claim with interest, costs and advocate's fees.

(Sgd.) J. KAISERMAN,
Attorney for Plaintiff.

D.9.

ISSUES as settled between the Parties in Civil Case No. 183/37.

IN THE DISTRICT COURT OF HAIFA.

Civil Case No. 183/37.

Between MARY KHAYAT

v.

SYNDIC IN BANKRUPTCY of S. N. Khoury.

ISSUES DATED 28.4.38.

1. Are P/1, P/2, and P/3 to be regarded as promissory notes or mere undertakings to deliver certain quantities of bullion ?

2. If they are promissory notes, then what rate of exchange is to apply in their conversion into Palestine currency for purposes of payments (with dates) ?

3. If they are undertakings, what is the measure of damage for failure to deliver within due time ?

4. Is Plaintiff entitled to any interest and if so at what rate and from what date (or dates) ?

Exhibits and Documents.

D.10.

EXTRACT from Summing up of Defendant in Civil Case No. 183/37.

D.10. Extract from Summing up of Defendant in Civil Case No. 183/37,

IN THE DISTRICT COURT OF HAIFA.

Civil Case No. 183/37.

Between MARY KHAYAT

and

SYNDIC IN BANKRUPTCY of S. N. Khoury.

EXTRACT FROM SUMMING UP OF DEFENDANT.

Interest.

It is submitted that no interest is payable in this case for two reasons :

(a) The documents in question being mere undertakings to deliver goods, interest does not run as from the date of failure to deliver, in the absence of agreement to pay interest, interest, if at all, cannot run until date of action filed.

(b) In any event, the claim is admittedly made against a Bankrupt Estate date of adjudication being 27.10.30 so that in accordance with Article 155 of the Ottoman Commercial Code interest in any event does not run from the date of adjudication. There is no suggestion that this is a privileged debt.

P.8.

STATEMENT OF FACTS in Civil Case No. 183/37.

P.8. Statement of Facts in Civil Case No. 183/37, 23rd November 1939.

STATEMENT OF FACTS.

1. Do you admit that the receipt dated 18th November, 1930 was issued and bears the signature of Mr. Ibrahim Sahyoun, formerly Syndic in the Bankruptcy of Salim Nasrallah Khoury ?

2. Do you admit that the following translation is a true and textual translation of the said receipt ?

Translation.

300	Turkish Gold Pounds—Copy of Promissory Notes 23.5.1929.
2,000	Turkish Gold Pounds—Copy of Promissory Notes 23.5.1929.
47	Turkish Gold Pounds—Balance Promissory Notes.
2,347	(Two Thousand three hundred and forty-seven Turkish Gold Pounds only.)

On this date I received from Mrs. Mary Khayat of Jezeen three certified copies of the promissory notes in the amount above-mentioned, i.e., Turkish Gold Pounds 2,347 (Two thousand three hundred and forty-seven) and the value is three promissory notes of which certified copies were given signed by Nasrallah Salim Khoury as detailed above.

(Sgd.) IBRAHIM SAHYOUN.

18.11.30.

3. Do you admit that the term " Kumbiale " appearing in the said receipt is equivalent to the English word " promissory note " ?

4. Do you admit having received from the Plaintiff an application dated 20th February, 1933 ?

5. Do you admit that the following translation is a true and textual translation of the said application ?

Translation.

" To the Syndics of the Bankruptcy of Salim Nasrallah Khoury, through the President of the District Court of Haifa, through the President of the Tribunal of South Lebanon.

Sir,

I received your letter dated 14th of February, 1933. You say that the former Syndic did not approve my application for the amount of LP.2,112.200 in the Bankruptcy of Salim Nasrallah Khoury and you allege that this happened because I did not appear and did not produce the original documents and you say that I have to come personally to Haifa or to empower someone to appear before the Syndics and produce the original documents and to demand the approval of my application and in case you do not hear from me in this respect, the Syndic will refuse my application as prescribed by law.

At the appointed time on that date I appeared and produced the original bill to the Syndics and I received a certified copy thereof which copy was certified by the Notary Public, Haifa, and I produced such bills and I have in hand a receipt signed by the Syndic, Mr. Ibrahim Sahyoun. The amount claimed from Mr. Salim Nasrallah Khoury is 2,347 Turkish Gold Pounds as per—

(A) Promissory notes signed by Nasrallah Salim Khoury to my order dated 10th October, 1929, maturing on 23rd May, 1930, for the amount of 300 Ottoman Gold Pounds.

(B) Another promissory note signed by Nasrallah Salim Khoury to my order dated 11th October, 1929, maturing on 23rd May, 1930.

(C) A third promissory note signed by Nasrallah Salim Khoury to my order dated 11th October, 1929, maturing on the 21st October, 1929.

This amount is due in Ottoman Gold Pounds and not LP.2,112.300 which you mentioned.

I am ill since that date and this debt has weakened my body and my heart. I have kept this amount to meet emergencies of this kind and for my livelihood. The delay in reimbursing this debt has compelled me to sell my personal effects and a claim for rent may be lodged against me and many other traders may institute actions against me as I owe them for necessaries.

I am now ill ; it is difficult for me to make a journey to Palestine and if the production of the certified copies of the notes to the former Syndic, after I had shown him the original documents is deemed insufficient and if you think that I may produce certified photographic copies of the notes, I will do so ; if you do not think it is sufficient I have no alternative as I do not dispose of any

Exhibits and Documents.

P.8. Statement of Facts in Civil Case No. 183/37, 23rd November 1939, *continued.*

means to pay to an attorney and my health does not permit me to make the journey as stated above. But if Mr. Nasrallah Khoury, God forbid, denies the debt and the law requires my presence in order to produce the original documents, I pray to inform me and happen what may I shall come.

Awaiting a reply . . . "

6. Do you admit that the following resolution is contained in the files of the said bankruptcy ?

"Decided to confirm the amount of LP.2,052.375 as a provisional debt which will be finally considered after the dispatch of the original promissory notes or a photographic copy thereof as the lady cannot attend owing to the causes specified in her application."

17.3.1933. (Sgd.) SYNDIC.

(Sgd.) JUGE COMMISSAIRE.

7. Do you admit having sent on the 20th day of March 1933, a letter to the Plaintiff ? Do you admit that the following translation is a true and textual translation of the said letter ?

Translation.

Saba & Co. 20.3.1933.
Accountants & Auditors.

Mrs. Mary Khayat,
Saida.

We inform you that we received your letter dated 20.2.1933, and through the District Court Haifa, in connection with the proof of the debt you claim from the Bankruptcy of Salim Nasrallah Khoury. The Syndic of the Bankruptcy has requested me to inform you that it was decided to confirm the amount of LP.2,052.375 as a provisional debt, which will be finally considered after the despatch of the promissory notes or after the despatch of a photographic copy thereof duly certified by the Notary Public, Saida, and this because you cannot appear personally in view of the reasons set out in your aforesaid application.

Consequently we pray you to send these promissory notes or a copy thereof as soon as possible in order to confirm your debt, without further delay.

Yours faithfully,

(Sgd.) SECRETARY,
Khoury Bankruptcy.

8. Do you admit that the term " kumbiale " appearing in the letter referred to in paragraph 7 hereof is equivalent to the English word " promissory note " ?

9. Do you admit having sent on the 15th day of April, 1933, a letter to the Plaintiff ? Do you admit that the following translation is a true and textual translation of the said letter ?

Translation.

Saba & Co. 15.4.1933.
Accountants & Auditors

To Mrs. Mary Khayat, Saida.

With reference to your letter dated 23.3.1933, addressed to the President, District Court of Haifa, and which was transferred to the Syndic of the Bankruptcy of Salim Nasrallah Khoury in connection with the proof (confirmation) of the amount of LP.2,052.375 and in view of your protest against such confirmation you are considered as a creditor in Turkish Gold Pounds and I was asked by the Syndic of the said Bankruptcy to inform you that the law prescribes in such cases to convert claims from the money in which the debt was incurred into the money having currency in the country where the Bankruptcy took place at the rate of exchange prevailing on the date of maturity of the debt.

And whereas your claim matured on 21.10.29 and 23.5.30 and whereas the rate of conversion at that time was 87½ per 100, your claim must, therefore, be converted as follows:

2,357 Turkish Gold Pounds at 87½	LP.2,062.375
Less received by you on account of the promissory note of LP.57	10.000
	LP.2,052.375

And this amount was confirmed.

(Sgd.) SECRETARY,
Khoury Bankruptcy.

10. Do you admit that the Plaintiff protested against the confirmation of her debt as stated in the letter referred to in paragraph 9 hereof ?

11. Do you admit that the following resolution is contained in the files of the said bankruptcy ?

Saba & Co.
Accountants & Auditors.

In view of the production of photographic copies of the promissory notes held (borne) by Mrs. Mary Khayat and having regard to the fact that her account was entered (registered) in a precautionary manner pending the production of the documents or copies thereof, therefore it has been decided to enter the sum of LP.2,052.375 mils as an ordinary debt (claim ?) in the estate (bankruptcy).

Dated 14.3.34.

(Sgd.) SYNDIC.

(Sgd.) JUGE COMMISSAIRE.

12. Do you admit having received from the Plaintiff an application dated 14th September, 1937 ? Do you admit that the said application was endorsed by the Secretary and the Syndic of the Bankruptcy ?

13. Do you admit that the following translation is a true and textual translation of the said application and endorsement thereon appearing ?

Exhibits and Documents.

P.8. Statement of Facts in Civil Case No. 183/37, 23rd November 1939, *continued.*

Translation.

To the Judge Commissaire of the Bankruptcy of Salim Nasrallah Khoury, Haifa, through the President of the Tribunal of First Instance of South Lebanon, through the President of the District Court, Haifa.

Applicant : Mary Khayat of Jezeen, now resident in Saida.

Whereas Mr. Nasrallah Khoury of Haifa was indebted to me in the sum of 2,347 Turkish Gold Pounds as per three promissory notes certified copy of which was delivered to the Syndic of the aforesaid Bankruptcy and I took from him a receipt dated 18.11.30.

And whereas the tenor of the said promissory notes confirmed my contention :

And whereas the law imposes on the debtor the obligation to restore to his creditor the debt in the same subject matter and there is no deficiency in the estate of the Bankruptcy :

And whereas, the assets of the Bankruptcy exceed the liabilities thereof and this can be evidenced by the actual position :

Wherefore I pray Your Honour to collect my debt amounting to 2,347 Turkish Gold Pounds from the said Bankruptcy with interest from the date of maturity and until payment and I reserve all my rights and I do not waive my rights not even in respect of one Piastre and pray for Judgment.

(Sgd.) MARY KHAYAT.

14 Ayloul (September), 1937.

No. 1308.

To His Honour

President District Court Haifa.

14.9.37.

(Sgd.) For President Tribunal First Instance.

What is the formality in this connection and I refer to the respectable Syndics.

24.9.37. THE MIXED JUDGE.

To the Secretary of the Bankruptcy of N. S. Khoury.

Please explain the formality of the proof of the aforesaid debt.

24.9.37. (Sgd.) NASRI FIANI.

To the Syndic of the Bankruptcy of N. S. Khoury.

After examination I found that the original of the proved debt in gold pounds was 2,347 as claimed by Applicant and the pound was converted at the time at the rate of 87½ Palestine Piastres which makes LP.2,052.375 mils and this amount is recorded in our books.

24.9.37. (Sgd.) NASRI GHANTOUS.

Whereas her claim is expressed in gold currency her claim was proved after conversion of the Turkish Gold Pound into Palestine currency, at the rate of 87½ per Gold Pound and the amount was entered in the books of the Bankruptcy and we can

do nothing. The Applicant on many occasions has applied to the Court in connection with the proof of the debt which took place in this manner and she refused to accept her share in the distribution on this proportion, but lately being in need she drew from the Bankruptcy some money on account and on every occasion she protested against the certification of her debt and we regret to be unable to do anything, but she may apply to the Court.

24.9.37.

14. Do you admit that the protests mentioned in the application referred to in paragraph 13 hereof were truly made and that Plaintiff accepted payment under protest ?

15. Do you admit the contents of the affidavit sworn in by Dr. B. Cohen ?

(Sgd.) J. KAISERMAN,
For Plaintiff.

Facts admitted with exception of paragraph 15.

(Sgd.) H. C. WESTON SANDERS,
for Defendant.

23.11.39

P.9.

P.9. Order by District Court, Haifa, in Civil Case No. 144/30, 19th July 1940.

ORDER by District Court, Haifa, in Civil Case No. 144/30.

Civil Case No. 144/30.

IN THE DISTRICT COURT OF HAIFA.

IN THE MATTER OF : The Ottoman Commercial Code

and

IN THE MATTER OF : The S. N. Khoury Bankruptcy

and

IN THE MATTER OF : An application by Nasrallah Khoury for the termination of the Bankruptcy proceedings.

ORDER :

This application coming on the 19th day of July, 1940, before His Honour the President of this Court (Judge Edwards) and after hearing Mr. J. Salomon, on behalf of Applicant and Walid Eff. Salah, on behalf of the Syndic of the S. N. Khoury Bankruptcy, it is hereby ordered as follows :—

(a) That the Applicant pay into Court in cash on or before the 29th July, 1940, the sum of LP.5,244.082 mils.

(b) That the following properties of Nasrallah Khoury be attached namely : 1. plot of land located in Yagour and Khreibeh village Haifa sub-District bearing No. 1 and registered in Haifa Land Registry in Vol. I Fol. 30 of an area of 171 metric dunums—value LP.10,260—2. Plot of land located in Yagour and Khreibeh village, Haifa sub-District, bearing

Exhibits and Documents.

P.9. Order by District Court, Haifa, in Civil Case No. 144/30, 19th July 1940, *continued.*

No. 3 and registered in Haifa Land Registry in Vol. I 32 of an area of 245 metric dunums value LP.14,700.—3. Plot of land located in Yagour Khreibeh village Haifa sub-District bearing No. 4 and registered in Haifa Land Registry in Vol. I Fol. 33 of an area of 170 metric dunums value of LP.10,200. While it is true that Mr. Salomon, the Applicant's advocate, offered only two plots for attachment, I consider that the three plots which I have mentioned should be attached in order to secure the debts of the following—Mr. George Muammar, Mr. Weston Sanders, Mrs. Edna Khoury, Mr. Fuad Saba, Mr. John Asfour, Salah Eff. Abbassi, Mr. Ibrahim Sahyoun, Mr. Nadim Silbah, Mr. Nasri Ghantous, Salim Abdul Kadir, Muhamad Shalabi, Haifa Municipality, Government of Palestine, Saba and Co., Mr. Wolf Slavutsky, The Arab Bank Haifa, and Barclays Bank, as per Schedule " A " handed in to me by the Syndic's advocate at the hearing on 17th July, 1940, and also to secure any remuneration that may still be due to the Syndic and the Juge Commissaire. The LP.5,244.082 mils will be paid in accordance with and subject to the conditions stated in (a), (b) and (c) of para. 8 of the application. Upon the payment into Court as aforesaid, and on attachment as aforesaid, a declaration will issue that the assets and properties of the bankrupt be released from the Bankruptcy and that the Syndic and officers supervising him or acting under him shall cease to function and that the state of Bankruptcy has terminated. With regard to the lands to be attached the attachment will remain pending any order of this Court for the benefit of any claimants who may eventually prove their claims by virtue of a final judgment. I also order that the Syndic do file his final account within one month from this date. In view of a possible appeal to the Supreme Court sitting as a Court of Appeal no formal order will issue from this Court on any of these findings of mine of today until after 8th September, 1940, but this will not affect my order that the sum of LP.5,244.082 mils be paid in cash into Court on or before 29th July, 1940. All parties to pay their own costs of this application.

By the Court.

(Sgd.) J. I. HABIBY,
Registrar.

D.11. Summing up of case for Plaintiff in Civil Case No. 183/37, 13th December 1939.

D.11.

SUMMING UP of Case for Plaintiff in Civil Case No. 183/37.

IN THE DISTRICT COURT OF HAIFA.

Haifa, 13th December, 1939.

Between MARY KHAYAT of Haifa, through her Attorney Mr. J. Kaiserman, Advocate of Haifa — Plaintiff

and

THE SYNDIC IN BANKRUPTCY of the firm S. N. Khoury, through Mr. H. C. Weston Sanders, Advocate of Haifa — Defendant.

SUMMING UP OF THE CASE FOR PLAINTIFF.

I shall first deal with the question of whether the documents upon which this action is based are Promissory notes within the meaning of

the law, or merely undertakings to deliver a certain quantity of merchandise, i.e. gold.

In support of his submission that the documents are mere undertakings, inasmuch as " Turkish Gold Pounds " are not " money or legal tender currency within the meaning of the Law," the Plaintiff is content to cite the Currency Notes Ordinance, Cap. 41 and the Palestine Currency Order, 1927, sections 1, 3 and 11, as well as to refer to Mr. de Brzozowski's evidence, and to expect by such means to make a short cut and arrive at his goal, i.e. prove that Turkish Gold Pounds are not money or legal tender currency within the meaning of the law.

The Currency Notes Ordinance, and the Palestine Currency Order, which deal with Palestine Currency Notes as being legal tender etc. in Palestine have not brought to light anything previously unknown or otherwise disputed.

It has never been contended by Plaintiff that during the period 1929–30 Turkish Gold Pounds were legal tender in Palestine and thus the above Ordinance and Order cited by Defendant are absolutely irrelevant with the point of issue.

Neither is it clear to what " Law " does the Defendant refer and what does he mean by stating that " Turkish Gold Pounds " are not " money or legal tender currency within the meaning of the law," because it is obvious that in a negotiable instrument drawn in any country, the sum of money may be expressed in terms of the currency of any other country and the instrument will, nevertheless, be valid. (See Shems on Bills, Page 69.) And the mere fact, therefore, that Turkish Gold Pounds are not legal tender in Palestine have no bearing on the question whether or not the documents are promissory notes.

I fail to see why in the case of a promissory note less consideration should be attached to gold as currency for the purpose of expressing a sum of money in such currency, than to mere foreign paper currency, just because the gold, as such, is fancied and desired by human beings.

Shems on Bills at page 39 clearly states :—

> " An order or a promise to pay 100 grams of gold or one kilogram silver is not a negotiable instrument for, unless this gold and silver are minted, they are not money."

Turkish Gold Pounds are clearly minted.

A country might have decided upon a diamond of certain weight and fineness to be the standard of legal currency within its boundaries and a negotiable instrument drawn or made in Palestine expressing the sum in such currency would still be valid in spite of the fact that the diamonds are employed by glaziers or worn by women as ornaments or otherwise dealt with as merchandise.

The sum may be expressed in dollars, francs or any other currency and the fact that it is expressed in Turkish Gold Pounds does not make it any the less a promissory note.

The Dictionary of Legal Terms and Citations by Sturgess and Hewitt, 1934 gives the following definition of money :

> " Currency coin : or promissory documents representing it, as for instance or in any foreign or colonial currency." (54 and 55 Vict., c. 39, Section 122.)

By virtue of Proclamation English Sovereigns are current coin, and therefore of necessity a promissory note wherein the sum expressed is in

Exhibits and Documents.

D.11. Summing up of case for Plaintiff in Civil Case No. 183/37, 13th December 1939, *continued.*

English Sovereigns is valid and a negotiable instrument within the law, and so is a promissory note expressed in Gold Dollars or Turkish Gold Pounds.

And now as to Mr. de Brzozowski's evidence: the Attorney for Defendants, in his summing up, put Mr. de Brzozowski's evidence in a nutshell by stating that bankers or merchants treat Turkish Gold Pounds as a commodity or merchandise, and not as a currency. But then Defendant's Attorney overlooked the fact that in his evidence Mr. de Brzozowski clearly stated: "That P/1, P/2, and P/3 are bills (or the French 'Traite') and that they could be discounted." I have never as yet heard of a mere undertaking being discounted by a Bank unless of course that undertaking was a legal promissory note. The witness continued that the U.S.A. dollar in Gold (in Palestine) is foreign money or commodity. He also said that there was no difference between gold dollars, Swiss Gold Francs, Napoleons, English Sovereigns and Turkish Gold Pounds. The only inference is that whereas the U.S.A. dollar in gold is in Palestine foreign money or commodity so are all the other gold coins, including the Turkish Gold Pounds and if so, it is then clearly proved by Defendant's witness that Turkish Gold Pounds are in Palestine treated also as foreign money and hence the documents P/1, P/2 and P/3 are clearly valid as promissory notes.

The mere fact that the witness says in his evidence that he understands the difference between currency and commodity, and that bankers and merchants treat gold coin as merchandise, does not affect the legal status of such gold coins which is a mere question of Law to be decided and interpreted by the Court alone. Let us imagine for a moment that the Chinese currency depreciated to such an extent that the nominal value of its currency notes was less than the actual value of the paper as such, as happened in Germany, vide: the Post-War inflation. Bankers of Palestine (or any other country) might in such case choose to deal with Chinese currency notes as merchandise and sell it as paper, thereby making a greater profit than by ordinary exchange transactions; nevertheless it is beyond doubt that any negotiable instrument expressed in such Chinese currency will be held valid in spite of the bankers' treating it as merchandise.

Current coin may be treated as a curiosity (*Moss* v. *Hancock*, 68 L.J.Q.B. 660) but this does not affect its being legal tender.

The Defendant only proved that Turkish Gold Pounds were not legal tender in Palestine, and that it was treated by some, in certain circumstances, as a commodity. By contenting himself with that he has failed to discharge his duty of proving the essential point that a promissory note expressed in gold coins is not a negotiable instrument, i.e. that Turkish Gold Pounds are not money.

At present even though Turkish Gold Pounds may not be in circulation in Turkey in the sense that it is not of normal occurrence that discharges of ordinary debts shall be made in Gold Pounds (just as the English Sovereign is not in circulation in England), nevertheless Turkish Gold Pounds are legal tender in Turkey, and a person is bound by law to accept it in full payment.

In view of the above, it is clear that the documents P/1, P/2 and P/3, are promissory notes.

I need not trouble to refer to the quotations from Shems on Bills and Byles on Bills nor to the Empire Digest, as they are relevant if

evidence and proof is forthcoming as to Turkish Gold Pounds not being money, but are irrelevant if they stand by themselves as happens in our case.

Again whether or not the Bills of Exchange Ordinance applies to the documents sued upon, and, in case of the former, whether or not the documents come within Section 72 (4) of the Bills of Exchange Ordinance, is irrelevant and makes but little difference, because in any case, the date deciding the rate of exchange to be employed will be governed by the same rules. However the Bills of Exchange Ordinance does apply in view of the provision of Section 96 which only saves the operation of the Ordinance as to acquired or accrued rights, and in our case the question of the date as to the rate of exchange is not one of " Acquired rights."

The second question to be dealt with is, at what rate of exchange shall these promissory notes be converted into Palestine currency : the rate of exchange when payment was due, or the rate of exchange when payment is actually made.

As to this point we have such abundance of Palestine Authority that Section 46 of the Palestine Order in Council cannot be invoked and hence, no report may be had to English authorities. In view of this, Defendant's arguments and authorities under the heading of " Rate of Exchange " etc., must fail.

Shems on Bills at page 69, states :—

> " Where the instrument is made in Palestine in foreign currency and is silent as to the rate of exchange for its conversion into local currency, the amount is payable at the rate of exchange prevailing at the actual date of payment."

In the case of *Abou Laban and Sons* vs. *Bergman* (Civil Appeal 39/1932), the Supreme Court confirmed the judgment of the District Court of Jaffa in Palestine currency at the rate of exchange on the day of payment.

The same rule was held by the Supreme Court in the case of *Abou Laban and Sons* vs. *Lieder and Fisher*, Civil Appeal 85/32, in which the Respondents had claimed from the Appellants the sum of 2,490.10 Swiss Francs upon a promissory note dated the 14th of May, 1931, made and expressed to be payable in Jaffa, and decided that judgment be entered for the amount claimed to be calculated at the rate of exchange prevailing at the actual date of payment.

In Civil Appeal 79/1936 in the case of *Makarious* vs. *Issa Cattan*, where Respondent sued the Appellant on four promissory notes, which amounted to 578 French Gold Pounds, etc., it was held that the rules of 1918 laying down rates of exchange for foreign currency were temporary rules to guide the inhabitants as to the rate of exchange in which debts at that date might be liquidated, but there was no reason to depart from the ordinary rule which always prevailed in these matters, i.e. sums payable in foreign currency in Palestine have to be paid at the rate of exchange prevailing on the date of payment.

Now the promissory notes (except P/3) were made and payable in Haifa, and thus the rules laid down in the above cases as to the rate of exchange to be applied should be adopted. I further contend that those rules should govern, as well, the case of the third promissory note (i.e. P/3) whereas in fact, the above rules are not so limited in character as to be confined only to negotiable instruments drawn and payable in Palestine.

Exhibits and Documents.

D.11. Summing up of case for Plaintiff in Civil Case No. 183/37, 13th December 1939, *continued.*

As to interest: The matter is much simpler than what the Attorney for Defendant makes of it. The documents are promissory notes and interest does run from the date of maturity. We have the reliable evidence of Mr. Hanna Naser Abbyad, the Chief Accountant of the firm S. N. Khoury, that interest was always paid when the promissory notes were renewed and that interest was paid on gold basis. In his evidence he expressly says that he knows that prior to the three promissory notes (P/1, P/2 and P/3) there were other promissory notes given by firm, and that P/1, P/2 and P/3 were renewals and substituted for the three previous bills (meaning notes) which have been dishonoured.

As to Defendant's contention that in accordance with Article 155 of the Ottoman Commercial Code interest does not run from the date of adjudication of bankruptcy I submit that this only applies in ordinary cases of bankruptcy and not where the assets of the bankrupt can satisfy in full all his debts and liabilities, as in our case.

In any case, interest is payable until adjudication, and in accordance with Article 112 of the Ottoman Code of Civil Procedure interest does run from the date of the commencement of proceedings once an action is instituted for the recovery of the debt, and this is a general provision superseding in this respect even Article 155 of the Commercial Code.

The fact that Defendant did on the 13th December, 1937 pay into Court the sum of LP.272.375 does not alter the above whereas the sum actually due to Plaintiff is far greater than the sum paid in Court.

This interest is payable on gold basis at the legal rate of interest as from date of maturity of each promissory note, and it should be converted into Palestine currency at the rate of exchange prevailing at the time of each actual payment of such interest.

It should be noted that whereas the burden of proof of the first two issues lies on the Defendant it was incumbent on him to satisfy the Court as to the promissory notes being mere undertakings and as to the rate of exchange for effecting the conversion. As regards the first issue Defendant was satisfied to produce one single witness whose evidence was not corroborated nor was it definite. Moreover the said witness admitted in his evidence that the promissory notes were equivalent to the French " traite " and could be discounted.

As to the second issue it is submitted that the Defendant relies on authorities inapplicable in Palestine in view of the abundance of Palestinian authorities on the point.

Wherefore it is prayed that judgment be entered for the Plaintiff with costs, interest and advocate's fees.

Copy of this was served privately by me on 13.12.39.

(Sgd.) J. KAISERMAN,

Counsel for Plaintiff.

D.12.

JUDGMENT of the District Court, Haifa, in Civil Case No. 183/37.

IN THE DISTRICT COURT OF HAIFA.

Civil Case No. 183/37.

Before : THE PRESIDENT (Judge Sherwell) and Judge SHEMS.

In the Case of :

MARY KHAYAT - Plaintiff

v.

1. SYNDICS OF THE KHOURY BANKRUPTCY
2. Mr. NASRALLAH KHOURY - Defendants.

JUDGMENT.

On the 28th October, the Plaintiff lodged an action against the Syndics of the Bankruptcy of Salim Nasrallah Khoury and Nasrallah Khoury claiming that they be adjudged jointly and severally to pay the sum of LP.1,722.155 mils (with costs and legal interest, etc.) being the equivalent in local currency of the balance due under three Promissory Notes made and given by the Second Defendant to the order of the Plaintiff to the total sum of 2357 Turkish Gold Pounds. It appears that in the Statement of Claim there is an error of ten Turkish Gold Pounds in respect of the third promissory note for 57 Turkish Gold Pounds which the Plaintiff has stated as 47 Turkish Gold Pounds.

2. On 15th November, 1937, the defence of the second Defendant, was filed by Fouad Bey Attallah and on 26th November, 1937, the defence of the first Defendant was filed by Mr. Sanders. Replies to the two defences were filed in due course on 8th February, 1938, and 10th February to the second and first Defendants respectively.

3. The first hearing took place on the 26th April, 1938, and after argument, Defendant No. 2 was dismissed from the action on the ground that the Bankruptcy proceedings had not been completed and the second Defendant was still a bankrupt.

4. After this decision the parties agreed upon six issues which are set out on pages 7 and 8 of the record of the proceedings.

5. A statement of facts was filed later by the Plaintiff which was admitted with the exception of paragraph 15 by Mr. Sanders for the first Defendant. On 23.11.1939, the parties agreed that the said statement of facts should be put in as a part of the record of the proceedings and further by consent of the parties the fourth and fifth issues were struck out.

6. The issues remaining therefore were as follows :—

(1) Whether the three documents Exhibits P/1, P/2, and P/3 are promissory notes or mere undertakings to deliver certain quantities of bullion.

(2) If they are promissory notes, what rate of exchange is to apply in their conversion into Palestine currency for the purpose of payment.

(3) If, on the other hand, they are undertakings, what is the measure of damages for non-delivery within the time stipulated.

Exhibits and Documents.

D.12. Judgment of the District Court, Haifa, in Civil Case No. 183/37, 17th January 1940, *continued.*

(4) Is the Plaintiff entitled to any interest, and if so, at what rate, and from what date or dates.

7. As to the first issue, the three documents Exhibits P/1, P/2 and P/3 were made out in Arabic and when translated read as follows :

" P/1, 2000 Ottoman Gold Pounds

Two Thousand Ottoman Gold Pounds only.

On 23rd May, 1930, I shall pay in Haifa to the order of Lady Mary Khayat of Jezeen the amount afore mentioned (set out) and amounting to two thousand Ottoman Gold Pounds, the value of which I have received in cash.

Made in Haifa on 11 October, 1929.

Signed Nasrallah Salim Khoury. (The stamps thereon are Palestinian and amount to the sum of 1000 mils.)

P/2, 300 Ottoman Gold Pounds

Three Hundred Ottoman Gold Pounds only.

On 23rd May, 1930, I shall pay in Haifa to the order of Lady Mary Khayat of Jezeen the amount above mentioned (set out) and amounting to three hundred Ottoman Gold Pounds the value of which I have received in cash.—Made in Haifa on 11 October, 1929.

Signed Nasrallah Salim Khoury. (The stamps thereon are Palestinian and amount to the sum of 150 mils.)

P/3, 57 Ottoman Gold Pounds.

Fifty seven Ottoman Gold Pounds only.

Ten days after date hereof I shall pay in Haifa to the order of Lady Mary Khayat of Jezeen the amount above mentioned (set out) and amounting to fifty seven Ottoman Gold Pounds the value of which I have received in cash. Made on 11th October, 1929.

Signed Nasrallah Salim Khoury.

Whereas this document was made in Jezeen, Lebanon, these stamps have been affixed by me on 18th November, 1930.

Signed Mary Khayat. (The stamps thereon are Palestinian and amount to 30 mils.)"

There appears to be nothing further which is material to any of the issues here on any one of the three documents in question.

8. At the time of the execution of these three documents, the principal (i.e. the first) Bills of Exchange Ordinance, No. 47 of 1929 had not been enacted (see page 351 and 359 of Annual Volume of Ordinance, 1929) and the law applicable is that found either in the Ottoman Commercial Code—particularly Articles 144 and 143, if they are promissory notes (See Section 96 of the said Ordinance, and Civil Appeal 126 of 1931) or in Article 1606 etc. of the Mejelle if they are mere undertakings.

9. We have no doubt at all that all these documents upon their proper and normal construction are promissory notes within the meaning of Article 143 of the Commercial Code having regard to their express terms and tenor were intended to be such when executed. Moreover, the Defendants themselves appear to have admitted in the Statement of Facts that these documents are promissory notes and according to the evidence of Hanna Abyad the bankrupt firm also always considered them to be promissory notes and had paid interest on a gold basis in respect of previous promissory notes for which these three notes Exhibits P/1, P/2 and P/3 have actually been substituted.

This view and construction we think is consistent with the course of dealing between the parties and the actual circumstances. The evidence of this witness and his knowledge of the facts was not challenged. Further it must be remembered that the Plaintiff resided in Jezeen in the Lebanon where Ottoman Gold Pounds were still legal tender and currency and the witness Alfonso de Prozovsky described these documents as " traites " (or bills) which could be discounted. This disposes therefore of the first and third issues.

10. Having decided that the documents in question are promissory notes and not undertakings it is convenient now to deal with the fourth (last) issue regarding the question of interest. Originally under Art. 141 of the Commercial Code the interest payable on a promissory note (or bill of exchange) which had been dishonoured by non-payment was calculated from the date of protest. In 1924, however, by virtue of Sections 3 and 4 of the Bills of Exchange (Protest) Ordinance, No. 31 of 1924, it was enacted that the interest payable in such case should be calculated from the date of maturity of the instrument " notwithstanding the provisions of Article 112 of the Code of Civil Procedure and Art. 141 of the Commercial Code." It follows therefore that the three promissory notes in question carry interest at 9% per annum as from their respective dates of maturity, viz. 23rd May, 1930, as to Exhibits P/1 and P/2, and from 22nd October, 1929 as to Exhibit P/3 (see Section 24 (*a*) of the Interpretation Ordinance, Chapter 69, Volume 11, Laws of Palestine, page 730), until the date of adjudication of the bankrupt firm of which Nasrallah Salim Khoury, the maker in all these instances, was a member—see Article 155 of the Commercial Code. This however is without prejudice to any claim which may be brought in the future for interest under Article 305 of the Code.

11. We come to the second issue and the question of the rate of conversion. There is no dispute now that certain payments were made on specific dates generally on account of the debt as stated and set out in para. 2 of the Statement of Claim. In para. 4 of the Defence and to the Court the amounts and dates of payment have been expressly admitted on behalf of the defence.

12. The Plaintiff has submitted in this regard that there is no need to invoke Article 46 of the Palestine Order in Council and turn to English decisions and authorities having regard to the " abundance of Palestine authority " governing the question to which he has referred.

The Defendant on the other hand has submitted " that where a contract provides for the payment of any sum for the doing of any act, delivery of any goods and the like and it becomes necessary by reason that the obligation is expressed in terms of foreign currency and it is necessary to convert into Palestine currency, that the rate of exchange that must be adopted for the purpose of conversion is the rate of exchange prevailing at the date payment is due or the date that breach occurred and not the rate prevailing at the date of action or the date of judgment." The latter moreover, in support of his argument has dealt very elaborately with the English authorities which appear to have established beyond doubt that in an action brought in England either for breach of contract or for tort where the damage is fixed and is due to conditions determined at a particular date but has to be assessed in a foreign currency, the date for conversion into English money is the date when the breach or the tort was committed and not the date when the judgment of the Court is

pronounced. Further it would appear that this principle may be said to extend and apply equally to an action brought in England for the recovery of a debt payable in a foreign country in foreign currency, as the amount of the debt, for the purpose of being expressed in the judgment in English money must be converted into English currency according to the rate of exchange prevailing between the two countries, and this mode of computation and thus converting the one currency into the other is based upon damages for the breach of contract to deliver the commodity bargained for (i.e. the foreign currency) at the appointed time and place; consequently the date for conversion is the date of breach and not the date of judgment." (See P. C. Lawrence J., pages 594 and 595 of 2 Chancery (1922) *in re British American Continental Bank Limited*). In this judgment a contrary view was expressed to the *obiter* in the last paragraph of the judgment of Atkin L.J. in *Société des Hotels Touquet Paris-Plage* v. *Cummings* (page 481 K.B.D. (1922)). The Judgment of P. C. Lawrence J. was confirmed on appeal; Lord Sterndale, then M.R., began his judgment by saying " I think this judgment is quite right "; and the other L.JJ. were of the same opinion. From this it would appear therefore that in English law the same principle above stated applies in actions for debt as well as for breach of contract or for tort.

13. Mr. Sanders on behalf of the Defendant does not however discuss the law in Palestine on this point, beyond referring to two decisions from the Court here (Civil Appeals 70/1936 and 95/1936) which eventually found their way to the Privy Council but which are in no way relevant to this particular point.

14. We should like to make one observation, however, and that is that in the judgment delivered in the House of Lords in the case of *Owners of Steamship " Celia "* v. *S/S Volturno* (2 A.C. (1921) 544) first Lord Buckmaster in the course of his judgment appears to have refrained from deciding expressly this question in the case where the damage is continuing (page 345). Again Lord Sumner (at page 553) says : " If there had been prospective or continuing damage the matter would have been more complicated, but I do not think the principle would have been affected." Further Lord Perundor at page 360 stated " to prevent misunderstanding, I desire to add that if the probability of alterations in the rate of exchange could be regarded as a relevant factor in ascertaining the amount of damage it would be within the discretion of a Registrar to fix that rate, as at the date of the assessment or at such other time as in his opinion might be reasonably adopted to obtain a fair figure." Further Lord Wrenbury commencing at the bottom of page 563 and top of page 564 in dealing with damages for the postponement of payment of damages says : " If such later damages can be recovered as under circumstances they may be if the Defendant improperly postpones payment, they would be recovered in the form of interest. They would be damages not for the original tort, but for another and a subsequent wrongful act." Lastly Lord Carson dissented and stated *inter alia* that he considered the rule and authorities that generally speaking the exchange is to be estimated at time of payment are sound in principle (page 569).

15. These *obiter* lead to the conclusion that the House was inclined to the view that cases might arise in which the principle laid for fixing the date for conversion might also be the foundation or basis for additional damages.

16. The claim here is one of debt based on three documents P/1, P/2 and P/3 which have been found to be promissory notes. The question before us therefore appears to be now whether we are to follow the principle laid down by the English Courts in such matters or the decisions of the Supreme Court of Palestine. We think in coming to a decision on this point, we must treat the decisions of the Supreme Court of this country as part of the Law of Palestine and binding upon us unless or until the principles laid down by such decisions have been varied or changed by legislation or the opinion of the Privy Council. The relevant decisions to which we have been referred are Civil Appeals No. 39 of 1932 (*Ahmed Hassan Abu Laban* v. *Fritz Bergman*), 85 of 1932 (*Ahmed Hassan Abu Laban* v. *Fischer*), 79 of 1936 (*Archimandrite Makarius* v. *Cattan*).

17. In brief those decide that sums payable in foreign currency in Palestine have to be paid at the rate of exchange prevailing at the actual date of payment.

The following passage may conveniently be quoted from the judgment of the Supreme Court (Jerusalem) in Civil Appeal No. 59 of 1932 (*Ahmed Hassan Abu Laban* v. *Fritz Bergman*) in this regard : " The fact that the appellants failed to fulfil their obligation as to the date upon which payment was to be made is no reason why they should be excused from fulfilling their obligation as to the amount payable. What the respondent is entitled to receive is the agreed sum in German or the amount of Palestine currency which would be required to purchase Francs to the agreed amount." Clearly the Respondent is not put in the position he would have occupied had the debt been paid at maturity if he is adjudged entitled to receive now only so much Palestine currency as would have been sufficient to purchase the agreed amount of Francs at the date of maturity. The result of such adjudgment would be that instead of receiving upwards of 17,000 Francs, the Respondent would receive Palestine currency sufficient to purchase only about two-thirds of that amount.

18. Similarly the Supreme Court in Civil Appeal No. 85 of 1932 (*Hassan Abu Laban and Sons* v. *Lieder and Fischer*) held that a promissory note made in Swiss Francs was payable at the rate of exchange prevailing at the actual date of payment.

19. The same principle was also followed in Civil Appeal No. 79 of 1936 (*Archimandrite Makarius* v. *Issa Cattan*) which was a claim brought upon for promissory notes where it was held that " the rules to which he referred made in 1918 were mere temporary rules to guide the inhabitants as to the rates of exchange on which debts at that time might be liquidated, but there is no reason to depart from the ordinary rule which always prevails in these matters, that is, sums payable in foreign currency in Palestine have to be paid at the rate of exchange prevailing on the date of payment."

20. In High Court action 2 of 1939 (The Law Reports of Palestine, Volume 6, January 1939, page 65 *et seq.*) this principle does not appear to have been discussed or dissented from.

21. It follows therefore that this rule applies in the case under consideration and extends to the part payments already made and to the balance still outstanding in respect of the debt due.

22. Since the promulgation of the Defence (Finance) Regulations (Supplement No. 2, 1939, p. 795) there has been no rate of exchange in

Exhibits and Documents.

D.12. Judgment of the District Court, Haifa, in Civil Case No. 183/37, 17th January 1940, *continued.*

the open market in respect of bullion or gold currencies and currencies based upon the gold standard and in the circumstances the rate of exchange as officially prescribed will have to be substituted.

23. In the result it is hereby ordered that the Defendants do pay to the Plaintiff the balance of the three promissory notes above mentioned on the basis of the rate of exchange as above stipulated and with interest until the date of adjudication as stated in paragraph 10 herein.

24. Although the Defendants have admitted liability in the sum of LP.272.375, nevertheless we think the Plaintiff is entitled to the full costs including advocate's fees which are to be taxed on the higher table.

Delivered this 17th day of January, 1940.

A. SHEMS, Judge.

A. G. SHERWELL, President.

D.4. Petition by the Appellant Mrs. Mary Khayat in Civil Case No. 183/37, 8th May 1940.

D.4.

PETITION by the Appellant Mrs. Mary Khayat in Civil Case No. 183/37.

J. Kaiserman & Co.
Advocates.

Haifa, May 8, 1940.

IN THE DISTRICT COURT,
Haifa.

Civil Case No. 183/37.

MARY KHAYAT

v.

SYNDICS KHOURY BANKRUPTCY.

The Defendants in the above case have deposited in Court the sum of LP.272.375 in favour of the Plaintiff.

Whereas the Plaintiff obtained judgment in her favour in the District Court, and the Judgment was confirmed by the Supreme Court, sitting as a Court of Appeal;

Prayer is hereby made to pay to me the said sum amount of LP.272.375.

(Sgd.) MARY KHAYAT,
Plaintiff.

ORDER.

As Petitioner has succeeded in her claim here and in the Court of Appeal LP.272.375 mils deposited on 14.12.37 vide receipt No. 119037 are to be refunded to Mrs. Mary Khayat.

(Sgd.) J. I. HABIBY,
Registrar.
9.5.40.

Witness to the Signature of Mrs. Mary Khayat.
D. B. COHEN, Advocate.

P.10.

JUDGMENT of the Supreme Court sitting as a Court of Civil Appeal in C.A. No. 197/40.

Civil Appeal No. 197/40.

IN THE SUPREME COURT
Sitting as a Court of Civil Appeal.

Before : Mr. Justice COPLAND and Mr. Justice ROSE.

In the Appeal of :

1. CAESAR ABYAD
2. Dr. GABRIEL ABYAD
3. GEORGE ABYAD
4. MUNIR ALAMI
5. BADIE SEIGALI - - Appellants

v.

1. NASRALLAH SALIM KHOURY
2. SYNDIC IN BANKRUPTCY of the firm S. N. Khoury, Haifa
3. HANNA ASFOUR, Advocate
4. GEORGE MUAMMAR, Advocate
5. FOUAD ATALLAH, Advocate
6. FOUAD SABA & CO., Jerusalem
7. WOLF SLAVOUSKY - - Respondents.

Appeal from the Order of the District Court of Haifa dated the 27th day of September, 1940.

For Appellants : Mr. Elias Koussa.

For Respondents : No. 1 Mr. J. Salomon and I. Catafago
No. 2 Mr. H. Asfour and Mr. J. Sahyoun
No. 3 in person
No. 4 in person
No. 5 Absent—served
No. 6 in person
No. 7 Mr. Schimmel.

JUDGMENT.

This is an appeal by five creditors of the estate of Nasrallah Khoury, a bankrupt, asking that an order of the District Court closing the bankruptcy should be set aside. The first Respondent, who is the bankrupt himself, has raised a preliminary objection or rather a series of preliminary objections, which we must deal with first.

The first point is that this Court is not seized of any appeal and the reason given for that allegation is that Mr. Koussa's five clients were not parties to the original motion before the District Court. The original parties in that case were Nasrallah Khoury, bankrupt, and the Syndic. Now judgment was given by the Learned President on the 19th of July, 1940, in which he dealt with various points that were raised, made an order that a certain sum of LP.5,244.082 Mils should be paid into Court by the bankrupt, and that an attachment should be made on certain

Exhibits and Documents.

P.10. Judgment of the Supreme Court sitting as a Court of Civil Appeal in C.A. No. 197/40, 21st October 1940, *continued.*

immovable properties of the bankrupt, and when that had been done, the bankruptcy should be closed. On the 27th July, 1940, Mr. Koussa, representing his five clients, appeared in Court and applied to be admitted as a party to the proceedings. No order or ruling would appear to have been given by the Court on this application and it is not in fact contended by the Appellant that any such order admitting him or otherwise was made. It seems to us that there is no reason why we should infer that leave was given to the Appellant to take part in the proceedings, and therefore that although Mr. Koussa did in fact address the Court after the 27th of July last, and the Court in its second order of the 27th of September dealt with certain points which had been raised by Mr. Koussa, there is again no reason to infer that he was heard by the Court in any capacity other than that of *amicus curiæ*. We are supported in the view that we take by a judgment recently delivered by this Court on the 9th October this year in the case of *David Moyal* v. *E. Karwassarsky*— Civil Appeal 162/40, where an action had been brought by the appellant for damages for breach of contract. Later on during the hearing of the case the appellant tried to amend his claim by putting in a petition asking for specific performance. This petition was never considered apparently by the Court and no ruling was given. Fortunately, as it happened for the appellant, and we held therefore that on the mere asking for a remedy, and no ruling having been given by the Court on that claim the position was not affected by such a proceeding. As I said therefore, in this case, it seems to us that Mr. Koussa was not a party to the order appealed from and was merely in the position of *amicus curiæ*.

In our opinion also the judgment of the 19th July, 1940, was a final judgment. It is true that the learned Judge said at the end :—

> " In view of a possible appeal to the Supreme Court sitting as a court of appeal no formal order will issue from this Court on any of these findings of mine of to-day, until after 8th September, 1940, but this will not affect my order that the sum of LP.5244.082 mils be paid in cash into Court on or before 29th July, 1940."

By " no formal order " we think the Learned Judge must have meant that no execution was to issue before the 8th of September, 1940, in other words, that the direction which he gave in his judgment was that the order should lie in the office until that date. That is a perfectly legal order to make and one that is frequently made. Otherwise, if this were not his meaning there could of course have been no appeal from that judgment of the 19th July and the direction would have been meaningless.

It seems therefore to us, that Mr. Salomon's first preliminary objection is a valid one and disposes of this present appeal. Holding this view we do not propose to deal with other points raised by him. We are the less reluctant to come to this decision since the bankruptcy proceedings have been lasting for ten years and the vast majority of all the claims have been settled in full, and security would appear to have been given for the settlement of all legitimate claims that may be outstanding.

We would mention one further point that arises, though nobody seems to have thought of it, and we therefore do not decide it and that is that it is questionable whether there should not have been five appeals because the five appellants have different claims and those claims are not joint ones.

P.10. Judgment of the Supreme Court sitting as a Court of Civil Appeal in C.A. No. 197/40, 21st October 1940, *continued*.

The appeal must, therefore, be dismissed and the provisional stay given cancelled. The first, fourth and the seventh respondents will have their costs on the higher scale, to include in respect of the first respondent LP.15 fee for attending and hearing. Regarding the seventh respondent he should have LP.10 fee for attending the hearing. The fourth respondent appearing in person, though an advocate, is not entitled to hearing fees.

Delivered this 21st day of October, 1940.

(Sgd.) R. COPLAND,
British Puisne Judge.

10 (Sgd.) ALAN ROSE,
British Puisne Judge.

P.11.

ORDER by the District Court, Haifa, in Civil Case 144/30.

P.11. Order by the District Court, Haifa, in Civil Case 144/30, 8th November 1940.

IN THE DISTRICT COURT HAIFA.

Civil Case No. 144/30.

Before : Their Honours, Judge EDWARDS (President) and Judge SHEMS.

IN THE MATTER OF : The Ottoman Commercial Code,

and

20 IN THE MATTER OF : S. N. Khoury Bankruptcy,

and

IN THE MATTER OF : An application by and on behalf of Mr. S. N. Khoury for the delivery to him of all books and documents relating to the said bankruptcy.

ORDER :

This Court has considered the application dated 23rd and filed in Court on the 25th October, 1940 by Mr. Nasrallah Khoury for an order to issue to the ex-Syndic, Mr. Elias Sahyoun, to return to Mr. Khoury all books and documents relating to the Bankruptcy. The Court has had 30 regard to the orders of this Court of the 19th July and 27th September, 1940 and also to the Judgment of the Supreme Court in Civil Appeal No. 197/40 of the 21st October, 1940. It is quite clear that it was implied in all these orders that the rights of remaining creditors should be safeguarded. Were we not to order the return of all books and documents to Mr. Khoury we might be nullifying the effect of the orders of this Court above referred to, to the prejudice of the rights of such creditors as may care to institute civil proceedings against Mr. Nasrallah Khoury personally.

Exhibits and Documents.

P.11. Order by the District Court, Haifa, in Civil Case 144/30, 8th November 1940, *continued.*

We therefore think that it is in the interest of justice that all the books and documents should be handed over to the Registrar of this Court where they should remain for, at any rate, some considerable time. The books and documents to be retained with the Registrar should only be those which, in the opinion of the Syndic, relate to disputed claims. All other books and documents not relating to disputed claims and the furniture may be returned to the bankrupt. We cannot see how the interests of Mr. Nasrallah Khoury will be prejudiced thereby. He, no doubt, will be allowed access to them for purpose of inspection at all reasonable times.

This order should be an answer to the application dated 29th October, 1940, filed by Messrs. Salomon and Catafago, advocates on behalf of Mr. Nasrallah Khoury.

Given under our hands and the seal of this Court this 8th day of November, 1940.

(Sgd.) A. SHEMS,
Judge,
District Court Haifa

(Sgd.) O. EDWARDS,
President,
District Court Haifa.

D.13. Judgment in Privy Council Appeal No. 1/42, 4th May 1943.

D.13.

JUDGMENT in Privy Council Appeal No. 1/42.

Privy Council Appeal No. 1 of 1942.

SYNDIC IN BANKRUPTCY OF SALIM NASRALLAH KHOURY - - Appellant

v.

MARY KHAYAT - - - - - - - - Respondent

from

THE SUPREME COURT OF PALESTINE.

JUDGMENT OF THE LORDS OF THE JUDICIAL COMMITTEE OF THE PRIVY COUNCIL, delivered the 4th day of May, 1943.

Present at the Hearing :

LORD RUSSELL OF KILLOWEN
LORD WRIGHT
LORD PORTER
SIR GEORGE RANKIN
SIR MADHAVAN NAIR.

(Delivered by Lord Wright)

This is an appeal from a judgment of the Supreme Court of Palestine, sitting as a Court of Civil Appeal delivered on the 24th April, 1940, confirming a judgment of the District Court of Haifa dated 17th January, 1940.

The Respondent who was resident in Jezzin, Syria, commenced the action on the 27th October, 1937, claiming 2,347 Turkish Gold Pounds as due upon three promissory notes. One disputed issue is whether these

three instruments were or were not promissory notes. One was for 2,000 Turkish gold pounds and matured on the 23rd May, 1930, the second was for 300 Turkish gold pounds and matured on the 23rd May, 1930, and the third was for 47 Turkish gold pounds and matured on the 21st October, 1929.

The Appellant who is the Syndic in the bankruptcy of the firm S. N. Khoury, merchants of Haifa, Palestine, did not deny the execution of the instruments but contended that they were not promissory notes but undertakings to deliver certain commodities, namely the quantity of bullion represented by the specified Turkish gold coins or the corresponding number of Turkish notes; he resisted the claim for interest; he further contended that the rate of exchange to be applied to the monies due should be as at the dates of maturity of the instruments, and not as the Respondent alleged, at the actual dates of payment.

The Supreme Court, affirming the District Court, held that the instruments were promissory notes and that interest was payable from the dates of maturity, but not beyond the date of adjudication in bankruptcy. The Court further held that the dates of payment of the notes were the dates at which the exchange was to be taken. Any claim for interest under Article 305 of the Code was reserved for further decision in Palestine and is not now before the Board.

There had been considerable changes in the rates of exchange of Turkish gold pounds into the currency of Palestine. At the dates of maturity the rate stood at LP.0.875 mils in Palestine currency to the Turkish gold pound. At the dates of the actual payments made on account of the debt between August, 1934, and September, 1937, the rates fluctuated between LP.1.485 and LP.1.510 to the Turkish gold pound. There is thus a considerable difference in the balance due upon the notes according as the dates of maturity are taken on the one hand or the dates of actual payment on the other. The payment actually made was made in the currency of Palestine and totalled in that currency LP.1,780 which sum, deducted from LP.2,052 the equivalent of 2,347 Turkish gold pounds exchanged at the rate of LP.0.875 to the Turkish gold pound left due and owing LP.272.375 which the Appellant paid into Court. On the other hand the Respondent claims that the original debt of 2,347 Turkish gold pounds has been only reduced by the payments on account which are brought in as totalling 1,206.500 Turkish gold pounds if the actual payments which were made in the currency of Palestine were exchanged into Turkish gold pounds at the rates actually ruling at the several dates of those payments. The Respondent accordingly claimed that there was still owing a balance of 1,140.500 Turkish gold pounds which represented a debt of LP.1,722.155 if exchanged at the date of the claim, at the then local currency equivalent of the Turkish gold pound which was LP.1.510 to the Turkish gold pound.

The judgments under appeal accept the Respondent's contentions and apparently accept her figures of claim, though no definite sum is stated in the judgments. It may be, however, that the precise figures were left for subsequent ascertainment, like the figure of interest due up to the date of adjudication. But since their Lordships for reasons which will appear later do not agree with the view of the Supreme Court that the relevant dates for the exchange are the dates of actual payment but are of opinion that the proper dates are the dates of maturity of the

Exhibits and Documents.

D.13. Judgment in Privy Council Appeal No. 1/42, 4th May 1943, *continued.*

instruments, they see no reason to differ from the figures put forward by the Appellant. These first state the amounts of the debts exchanged into Palestine currency at a rate which apparently is not disputed if the Appellant is correct in taking the dates of maturity of the instruments as the basic dates. From this figure of total debt in terms of Palestine currency, the payments made and accepted in Palestine currency have been deducted, leaving the balance admitted to be due in the same currency.

Their Lordships will deal with the questions of principle which arise on the judgments appealed from.

On the first question, whether the instruments in suit were promissory notes or undertakings to purchase a commodity, that is, either gold or Turkish notes taken at their gold value, their Lordships agree with the judgments of the Courts below. The form of the instrument is obviously that of promissory notes. The first translated from the Arabic runs simply :

> " On 23 May, 1930, I shall pay to the order of Mrs. Mary Khayat of Jezzin the sum specified above (that is in the heading) i.e. two thousand gold Turkish Pounds. Value received in cash, Haifa, 11 October, 1929."

It is signed by the Appellant, and duly stamped. The others are *mutatis mutandis* in identical terms.

What seems to be relied on by the Appellant is the description of the subject-matter of the obligation as " gold Turkish Pounds." It is contended that Turkish gold coins are not currency in Palestine ; however, it is clear that they are currency in Turkey and Syria, where the Respondent was resident. Syria was at the material times a former Turkish territory mandated to the French.

A promise to pay a sum expressed in Turkish money, made in Palestine, is not outside any of the recognized definitions of a promissory note. It is a promise to pay in a currency even though it is not that of the country where the note is made or payable. It is very common to have bills of exchange in a currency foreign as regards one of the parties or as regards the place where the bills are issued or payable. Generally in that case one of the parties is in the country in which the stipulated unit of account (such as pound or dollar) is in current use and the payment is to be made in that country. It is true that in proceedings to enforce payment the debt, being expressed in foreign currency, must be translated into the corresponding amount of the local currency if judgment is to issue. But all the same the promise is a promise to pay money. What is peculiar here is that the note is both made and payable in Palestine so as to make it appear strange that Turkish currency is chosen. But then the payee is resident in Syria where the unit of account in use is Turkish. In their Lordships' judgment, the three instruments are promissory notes.

Nor were the notes any the less negotiable instruments because of the word " gold." That word does not here import an obligation to deliver gold or pay in gold. What it does is to import a special standard or measure of value. This special measure of value may be described sufficiently, though not with precise accuracy, as being the value which the specified unit of account would have if the currency was on a gold basis. It is equivalent to a gold clause. " Such clauses," were said by Lord Maugham in *Rex* v. *International Trustee for Protection to Bondholders*

(1937) A.C. 500, at p. 562, to have been "intended to afford a definite standard or measure of value and thus to protect against a depreciation of the currency and against the discharge of the obligation by a payment of lesser value than that prescribed." Gold clauses were discussed and explained to the House of Lords in the opinion delivered by Lord Russell of Killowen in *Feist* v. *Société Intercommunale Belge d'Electricité* (1934) A.C. 161. Such clauses often specify a standard of value based on a particular weight and fineness of gold. In this case it is taken without objection that the Turkish gold pound has an established value. The distinction between the Turkish pound and the Turkish gold pound was illustrated in *Ottoman Bank of Nicosia* v. *Chakarian* (1938) A.C. 260. In that case a contract which included an obligation to pay in Turkish pounds had been made at a time when Turkey was on the gold standard. Before the date when payment became due Turkey went off gold and the pound depreciated. It was held that the payee was only entitled to be paid at the depreciated rate and could not claim to be paid in gold pounds, that is in undepreciated currency.

In their Lordships' opinion the Courts in Palestine were right in holding that the three instruments were promissory notes whether the definition applied is that contained in Article 145 of the Ottoman Commercial Code or in the Bills of Exchange Ordinance of 1929, Section 84 (1) which corresponds with Section 83 (1) of the English Bills of Exchange Act (1882) in particular because the notes were unconditional promises to pay a sum certain in money.

Their Lordships think that the appeal fails on this issue and the Respondent is therefore entitled to interest from the date of maturity, though the interest will not run beyond the date of adjudication.

There remains the more serious question which is at what dates must the rate of exchange be calculated. There can, their Lordships apprehend, be now no doubt as to the English law on this point. It is true that different views have been taken at different times and by different systems of law. Indeed there are at least four different alternative rules which might be adopted. The rate of exchange might be determined as at the date at which payment was due, or at the date of actual payment, or at the date of the commencement of proceedings to enforce payment, or at the date of judgment. English law has adopted the first rule, not only in regard to obligations to pay a sum certain at a particular date, but also in regard to obligations the breach of which sounds in damages, as for an ordinary breach of contract, and also in regard to the satisfaction of damages for a wrongful act or tort. The general principles on which that rule has been based are explained by the Court of Appeal in *Di Ferdinando* v. *Simon Smits & Co.* (1920) 3 K.B. 409 a case of an ordinary breach of contract. The rule however was established many years before then. It was again enunciated by the House of Lords in the *Celia* v. *the Volturno* (1921) 2 A.C. 544, where the claim was for damages in tort consequent on a collision. It was there contended that the date of the judgment was the proper date for translating the Italian currency in which the damages were assessed into English currency capable of being put into the judgment of an English Court, and some reference was made to different views expressed in the United States. Lord Sumner, however, holding that the date when the obligation accrued was the date of the breach

Exhibits and Documents.

D.13. Judgment in Privy Council Appeal No. 1/42, 4th May 1943, *continued.*

and that it was that date that the exchange was to be taken at p. 555 said :—

> " The agreed numbers of lire are only part of the foreign language in which the Court is informed of the damage sustained and, like the rest of the foreign evidence, must be translated into English. Being a part of the description and definition of the damage, this evidence as to lire must be understood with reference to the time when the damage accrues, which it is used to describe."

This can be applied directly to a case where the damage claimed arises from failure to pay a sum in foreign currency, like the Turkish gold pounds here. It is true that Lord Sumner does not deal specifically and seems to reserve the question of what is the rule where there is a contractual obligation for the payment of fixed or calculable sums in a foreign place and (their Lordships would prefer " or ") in a local currency. He does, however, observe that " waiting to convert the currency till the date of judgment only adds the uncertainty of exchange to the uncertainty of the law's delays."

Lord Buckmaster (p. 548) rejects summarily the idea that the date of the writ or of the commencement of the action is the proper date. His view, in their Lordships' opinion, is summed up by his statement on p. 549 that in regard to damages which have been

> " assessed in a foreign currency, the judgment here which must be expressed in sterling must be based on the amount required to convert this currency into sterling at the date when the measure was properly made and the subsequent fluctuation of exchange, one way or the other, ought not to be taken into account."

In the case of bills of exchange (which include promissory notes) the English Bills of Exchange Act, 1882, by section 72 (4) enacts that the amount of the foreign currency is to be translated into United Kingdom currency according to the rule of exchange for sight drafts at the place of payment on the day the bill is payable. The Act was a codifying Act and did not purport to change the law, but to declare it, and the Palestine Ordinance expressly states that it declares the law. It is true that the Act and Ordinance state the rule as being applicable to bills drawn out of and payable in the United Kingdom or Palestine as the case may be but not expressed in the currency of the United Kingdom or Palestine. But their Lordships think that the essence of the rule applies in a case where the sum is not expressed in the United Kingdom or Palestine currency, and is payable in the United Kingdom or Palestine. Their Lordships accordingly consider the Ordinance to involve an authoritative declaration of the proper rule to apply to the calculation of the exchange in a case like this. Nor do their Lordships think it necessary to consider whether the Ordinance (see s. 72 (4)) applies to all the three notes or only to the notes which matured before the date of the Ordinance. The Ordinance only declares what the English rule is and as it is so it has been for many years.

The reason why the Supreme Court refused to apply the English rule and instead held that the dates of actual payment were to be adopted in converting the currency, was that the decisions of the Courts in Palestine bound them to adopt the latter principle. The Supreme Court, while not contesting what the English rule was, added " As far as Palestine is concerned, however, as the learned President (of the District Court)

pointed out in his long and careful judgment, the balance of authority is the other way." What the President had said was " we must treat the decisions of the Supreme Court of this country as part of the law of Palestine and binding on us, unless and until the principles laid down by such decisions have been varied by legislation or the opinions of the Privy Council."

Their Lordships agree with this view and must determine what should be, or more precisely, is the rule in Palestine.

The Supreme Court held that in Palestine the principle that the exchange should be taken as at the date of actual payment had been established " since at any rate 1932." But the Court does not quote any authority except the Palestine decisions which do indeed in the words of the Court " lay down the proposition that in an action on a promissory note the conversion into Palestine currency should be at the rate of exchange prevailing at the actual date of payment." These decisions were *Ahmad Hassan Abu Laban* v. *Bergman*, Civil Appeal 39/32 (i.e., 1932) reported in 2 Rotenberg's Reports, p. 658, *Abu Laban* v. *Lieder & Fisher*, Civil Appeal No. 85/32, reported in the same volume, p. 664, and an unreported decision of the Supreme Court No. 79 of 1936. The Supreme Court also refer to *Apostolic Throne of St. Jacob* v. *Saba Said*, 6 Palestine Law Reports, 528, decided in 1938, by this Board, where the issue was whether the bond was or was not a gold bond. It appears from the head-note to the report that the Courts in Palestine had taken the rate of exchange as at the date of payment but no issue was raised on this point before this Board and the judgment shows that it was not considered by the Board. The case cannot be regarded as a decision of the Board on this point.

Their Lordships accordingly have now to decide the question as one which is open to their consideration. Their conclusion is that the English rule should prevail in Palestine. Article 46 of the Palestine Order in Council (1922) must be considered. It was adverted to in a judgment delivered by Sir George Rankin by this Board in *Hamur Awqaf of Jaffa* v. *Government of Palestine* (1940) A.C. 503, and in an unreported case of *Sheikh Suleiman* v. *Michel Habib*, Privy Council Appeal No. 1 of 1935. In the latter case Lord Atkin, delivering the judgment of the Board, observed that under Article 46 the Courts in Palestine were to exercise their jurisdiction " in conformity with the substance of the common law and the doctrines of equity in force in England." This was to be subject to the provisions of the Ottoman Law in force in Palestine on 1st November, 1914, and certain later Ottoman laws and such Orders in Council and Ordinances as were in force in 1922, and are subsequently in force, and to modifications necessarily required by local circumstances. In the present case it is not suggested that there were any provisions of Ottoman Law relevant to this point and no Ordinance can be quoted except the Bills of Exchange Ordinance, to which reference has already been made, and this Ordinance, as already pointed out, is in substance contrary to the view taken by the Palestine Courts. The Order in Council does not mean that decisions of the Supreme Court which are subject to appeal to His Majesty in Council, are in themselves authorities to establish finally a rule of law contrary to English law. A rule of law to have this consequence must be one laid down in Imperial Acts or Orders in Council or in Ordinances applicable to Palestine or in the former Ottoman Law, that is in the various Ottoman Codes, the Mejelle or other authoritative sources of Ottoman law, so far as not superseded by Ordinances of Palestine.

Exhibits and Documents.

D.13. Judgment in Privy Council Appeal No. 1/42, 4th May 1943, *continued.*

As no rule of law is so laid down their Lordships are therefore of opinion that on this issue it should be held to be the law of Palestine that in such a case as the present the correct date for calculating the exchange should be the date of the bill or note, and not the date of any actual payment. The Board may further observe that the English decisions seem to consider the date of actual payment as one which cannot properly be taken for converting the exchange. One effect of adopting it would be that a judgment or execution under it could not fix a definite sum because until actual payment the rate could not be ascertained. The date of judgment was rejected by the House of Lords in the *Celia* v. *Volturno* case (*supra*). To adopt the date of payment would be to place the rate of exchange in the control of the debtor who could at his will or convenience delay payment and thus benefit or attempt to benefit by the fluctuations of exchange.

The sum of LP.272.375 paid into Court on 13th December, 1937, is not sufficient to cover interest due from dates of maturity to date of adjudication.

Their Lordships will humbly advise His Majesty that the appeal should be allowed and the decrees of the Courts in Palestine be set aside ; that the Plaintiff should have judgment for LP.2,052.375 with interest at 9 per cent. per annum.

(*a*) on L.P.2,012.500 from 23rd May, 1930, to 27th October, 1930 and

(*b*) on LP.39.875 from 21st October, 1929, to 27th October, 1930.

less a sum of LP.1,780 paid on account in the years 1934–7 ; this judgment to be without prejudice to any future claim for interest under Article 305 of the Code. Liberty to either party to apply to the trial Court to withdraw the money paid into Court or any part thereof.

The Appellant must pay the Plaintiff's costs of the action. The Plaintiff must pay the Appellant's costs of the appeal to the Supreme Court and of this appeal.

No. 62 of 1946.

In the Privy Council.

ON APPEAL

FROM THE SUPREME COURT SITTING AS A COURT OF APPEAL, JERUSALEM.

BETWEEN

MARY KHAYAT - - - - - - - - - - *Appellant*

AND

1. NASRALLAH SALIM KHOURY
2. NASRALLAH SALIM KHOURY on behalf of the heirs of his late brother Youssif - - - - - *Respondents.*

RECORD OF PROCEEDINGS.

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