

[JACKSON, C.J., AND GRIFFITH WILLIAMS, J.]

1944  
June 28MICHAEL  
GAVRIE-  
LIDES  
v.  
MUSTAFA  
MULLA  
IBRAHIM.MICHAEL GAVRIELIDES, *Appellant*,

v.

MUSTAFA MULLA IBRAHIM, *Respondent*.*(Civil Appeal No. 3737).**Mortgage Contract—Interest—Declaratory Judgment.*

The respondent brought an action in the District Court asking for a declaration *inter alia* that the interest payable by him to the appellant under a mortgage contract dated 13th November, 1930, securing the sum of £400 was simple and not compound, and that it was not converted into compound interest by any subsequent agreement. The District Court having declared that the interest due under the mortgage was simple, proceeded to declare that it had not been varied by subsequent agreement, and that the amount due under the mortgage was £400 plus simple and not compound interest at the rate of 9% per annum from 13th November, 1930, less £508. 17s. 7p. paid on account on 15th April, 1942.

*Held*: It is within the discretion of the Court to decide whether it will pronounce a declaratory judgment or not. There is a danger in declaratory judgments upon issues that are complicated and contentious and the material before the Court meagre, and when the issues would be more successfully clarified in an action of the ordinary kind.

Where a mortgage contract contains no provision for the addition to the principal debt of interest in arrears, the interest that the contract secures is simple interest.

Appeal from the judgment of the District Court of Limassol.

*Sir P. Cacoyannis* (with *J. Potamitis*) for the appellant.

*M. Houry* for the respondent.

The facts are set forth in the judgment of the Court which was delivered by:

JACKSON, C.J.: This is an appeal from a declaratory judgment of the District Court of Limassol purporting to define the rights of the parties in the matter of the rate of interest due by the respondent to the appellant on a debt of £400 secured by a mortgage of certain properties dated 13th November, 1930.

There can be no doubt that the interest for which the mortgage contract provides is simple interest. The contract itself contains no provision for the addition to the principal debt of interest in arrear and without a provision to that effect the interest on the mortgage debt which the contract itself secures is simple interest.

This proposition is not at all affected by section 4 of the Usury (Farmer's) Law, 1919, which provides that no interest shall become payable on interest due on any loan to a farmer until one year after such interest has become due. Apart from the fact that there was no evidence, and no finding, by the trial Court that the plaintiff-respondent is a farmer within the meaning of that law, the effect of the section cannot possibly be to convert simple interest into compound interest in the absence of an agreement to do so.

Up to this point the issues raised by the plaintiff's request for a declaration of his rights are simple enough. But he went much further. He asked the District Court to declare that there had been no agreement, subsequent to the mortgage bond, either oral or in writing, for the payment of compound interest on the debt

secured by the mortgage. He also asked the District Court to declare that if there had been such an agreement, or any acknowledgment of liability to compound interest on his part, the agreement or acknowledgment was of no effect because :—

- (a) it could not vary the terms of the registered mortgage ;
- (b) there was no consideration for it ;
- (c) it had been obtained by fraud or misrepresentation on the defendant's part.

Two witnesses were called by the plaintiff and none by the defendant. Neither of the parties gave evidence themselves. The first of the plaintiff's witnesses was the defendant's clerk who produced certain documents to which we shall refer later. The second witness was a clerk from the Land Registry Office in Limassol who declared that there was nothing in the Land Registry records to show that the terms of the mortgage between the parties had been varied by subsequent agreement.

The documents produced were the mortgage contract and the certificate of registration, a letter from the plaintiff's advocate, dated 27th April, 1942, to the defendant asking for an account, two earlier letters from the plaintiff to the defendant, dated 21st January, 1935, and 24th April, 1940, and a letter book and a ledger of the defendant. The plaintiff's letters purported to be acknowledgments of indebtedness in certain sums of money calculated on the basis of compound interest on the mortgage debt of £400, and the later of these letters incorporated a statement in print acknowledging that compound interest had been charged after, or in pursuance of, an agreement.

None of these documents were proved, and, notwithstanding that the letters purporting to be acknowledgments of liability to compound interest were produced by a witness called by the plaintiff, he denied, in his reply in the pleadings, that he had given any such acknowledgments and says that if he signed them he did so by mistake.

It will be seen from this brief summary of the material before the District Court how complicated and contentious were the issues upon which the Court was asked to make a declaration and how meagre was the evidence presented to the Court for its guidance. We regard it as especially remarkable that allegations of misrepresentation and fraud were made against the defendant by the plaintiff without the support of any evidence whatever, either oral or documentary, at the trial. It is equally remarkable that the District Court allowed this improper procedure to pass without comment.

It is within the discretion of a Court to decide whether it will pronounce a declaratory judgment or not, and it is natural that a Court should wish to do its best for the assistance of a litigant who applies to it for the clarification of his legal rights. But we feel bound to say that, in our opinion, this case illustrates very forcibly the danger of declaratory judgments upon complicated and contentious issues when the material before the Court is, to say the least, extremely meagre and especially when it would appear that the issues would probably be much more successfully clarified in an action of the ordinary kind.

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The defendant claimed that there was an agreement, quite apart from the mortgage, for the payment of compound interest on the amount of the mortgage debt and that he could sue on this agreement without relying on the mortgage or on the security of the mortgaged properties. It was the existence of this agreement that raised the complicated issues that we have mentioned. The District Court declared that no such agreement had been proved and that if one had been made there was no consideration for it for the period between the date of the mortgage, in 1930, and 1940. We think that there was insufficient material before the Court to justify it in making any declaration on the subject of this agreement one way or the other.

In our opinion the District Court was right in declaring that the interest secured by the mortgage is simple interest, that the mortgage contract has not been varied and that, consequently, nothing more than simple interest is secured upon the mortgaged lands. To that extent the judgment of the District Court must be confirmed. To the extent to which the judgment went beyond that declaration it must be quashed.

In view of the conclusion at which we have arrived and of all the circumstances we make no order as to costs.

1944  
June 29

(JACKSON, C.J., AND HALID, J.)

THE PANCYPRIAN SCHOOLMASTERS ASSOCIATION,  
v. *Appellants,*  
MIKIS AGROTIS, IN HIS CAPACITY AS REGISTRAR OF  
TRADE UNIONS, *Respondent.*  
(*Trade Union Appeal No. 1 of 1942.*)

*Trade Union—Refusal to register association as a trade union—Workmen—Teachers employed by Government for the purposes of the Elementary Education Law, 1933—Trade Unions and Trade Disputes Law, 1941.*

The Registrar of Trade Unions refused to register the appellants as a trade union, on the grounds that schoolmasters are not "workmen" within the meaning of the Trade Unions and Trade Disputes Law, 1941. No reference was made to the objects of the association or to any of its rules.

*Held:* "Trade Union" is defined in section 2 of the Trade Unions and Trade Disputes Law, 1941, by reference to the objects of the union not to the personnel. If by reason of the nature of his employment a person should be regarded as employed in trade or industry for the purposes of the Trade Unions Law, he should be so regarded whether his employer employs him for profit or not. Teachers employed by Government for the purposes of the Elementary Education Law, 1933, are "workmen" within the meaning of the Trade Unions Law.

Appeal under section 16 of the Trade Unions and Trade Disputes Law, 1941, against the refusal of the Registrar of Trade Unions to register the appellants as a union.

*G. Chrysaftinis* for the appellants.

*P. N. Paschalis*, Acting Solicitor-General, for the respondent.

The facts are set forth in the judgment of the Court which was delivered by:

JACKSON, C.J.: This is an appeal by an association of persons, calling themselves "The Pancyprian Schoolmasters Association" of Cyprus, against the refusal of the Registrar of Trade Unions to