[TYSER, C.J. AND BERTRAM, J.]

CONSTANTINO DIANELLO AND OTHERS
v.
THE KING'S ADVOCATE, Ex parte THE KING'S ADVOCATE.

CIVIL PROCEDURE—JUDGMENT—POWER OF COURT TO CORRECT ERROR IN JUDGMENT—ORDER XVII, RULE 2.

INTEREST—RIGHT TO RECOVER INTEREST ACCORDING TO TURKISH AND ENGLISH LAW—INTEREST ON MONEY DEPOSITED WITH THE GOVERNMENT UNDER PROTEST—COMMERCIAL CODE APPENDIX, ARTS 91 102.

The Court has power at any time to correct an error in its judgment, even after the judgment is passed and entered, so as to make the judgment as drawn up agree with the judgment which the Court intended to pronounce, unless circumstances have occurred in the interval which would make such a course inequitable

The Plaintiffs in an action instituted in the year 1901 claimed from the Government the sum of £385 deposited with the Government under protest, together with interest, *from the date of deposit. The District Court dismissed the action but in the year 1908 the Supreme Court reversed the decision of the District Court and gave judgment for "the amount claimed" Neither in the District Court nor in the Supreme Court was any mention of interest made by either side, no evidence was tendered by the Plaintiffs of any special circumstances justifying the claim for interest and the judgments in the Supreme Court were based upon an admission of fact by the Assistant King's Advocate, which did not refer to interest The Registrar of the Court however in drawing up the judgment inserted an order for the payment of interest*

HELD *(on an application made by the Government two years afterwards) that he Court had power to amend its judgment by striking out the words ordering the payment of interest*

In Turkish law debts do not carry interest. The articles in the Commercial Code relative to interest on debts only refer to commercial contracts.

In English law interest on a debt is only payable

1 *Where a contract provides it*
2 *Where there is a debt or a sum certain payable at a certain time by virtue of some written instrument*
3 *Where a demand has been made in writing for the amount due with notice that interest will be claimed*

This was an application to the Supreme Court to amend one of its own judgments.

The case in which judgment was given is fully reported in 8 C.L.R., p. 9.

The Plaintiffs in an action instituted in the year 1901, claimed from the Government the sum of £385, deposited with the Government under protest. The writ also claimed interest from the date of the deposit. The District Court dismissed the action and the Plaintiffs appealed to the Supreme Court.

Neither in the District Court, nor in the Supreme Court was any mention made of interest by either side. No evidence was tendered

by the Plaintiffs of any special circumstances justifying the claim for interest.

In the course of the case, with a view to shorten the proceedings the Assistant King's Advocate made an admission of facts. (See the judgment of the Chief Justice) and the judgments of the Supreme Court were based upon that admission. That admission did not in terms, and was not intended to, refer to interest.

The Supreme Court on February 2nd, 1908, gave judgment for "the amount claimed," but the Registrar in drawing up the judgment inserted an order for the payment of interest.

The interest was duly paid, but in the subsequent case of *Demetriou v. The King's Advocate* (reported 9 C.L.R., p. 24), it transpired that the Court had not intended to order the payment of interest.

The King's Advocate accordingly, on the 11th March, 1910, applied to the Court to amend its judgment by striking out the Order for the payment of interest.

The King's Advocate in person (*Amirayan* with him).

Paschales Constantinides and *Artemis* for the Respondents.

The Court granted the application.

Judgment: THE CHIEF JUSTICE: The Court has power in certain cases to correct errors in its judgments. Where that power exists, the time that has elapsed is immaterial. If it is shown that a mistake has been made, the Court may at any time make the necessary corrections.

A judgment may be erroneous in two ways.

Sometimes the judgment of the Court itself is erroneous, that is to say, the judgment may be pronounced in such a way as not to express the real intention of the Court. This was the case in *In re Swire* (1885) 30 Ch.D., 246, cited in the course of the argument.

In other cases, the judgment is drawn up in such a way that it does not represent the judgment actually given by the Court in the Court.

To test whether this was so in this case, we must refer to our notes to see, if we intended to award interest. Our notes say "Judgment for the amount claimed." To see what is meant by "amount claimed" we have to look at the proceedings. Now ordinarily interest is not included in the expression "amount claimed."

Interest in this case is no doubt "claimed," but it is very doubtful if it can be said to have been claimed as a part of the "amount claimed."

It was claimed as something supplemental to the "amount claimed."

What does the Court below say in its written judgment? "The "Plaintiffs . . . sue . . . to recover £385 deposited in the Government "Treasury on the demand of the Government, or (by amended issue) "£385 for breach of contract."

This judgment was read in the Court of Appeal, and Mr. Amirayan who appeared for the Government made the following admission: "The money was paid into Court (which means apparently 'into "the Treasury') to enable Appellant to go on manufacturing. He "is to recover the money if the Government have no right to stipulate "for the payment of £55 a year in the license, or if revocation is of "no effect."

Not one word was said about interest in Mr. Paschal's argument for the Plaintiff. No attention was drawn to the point, and at the conclusion of the case we said, "Judgment for the amount claimed."

I have no doubt that interest was not in our minds and probably not in the mind of anybody. The writ was issued in 1901. Our judgment was given in 1908, and the fact that there was "claim" for interest in the writ had probably passed from the minds of all persons concerned.

Now the judgment as drawn up does not agree with what was actually in the minds of the Court, and therefore as nothing has intervened in the interval to make such a course inequitable, it should be corrected.

There is only one point to be considered.

It is said that, if interest is really due, it would be useless to correct the judgment, and that we must therefore decide whether interest is really due or not.

To a certain extent we must consider the point, but not I think to the full extent asked for.

On the evidence before us there was no proof of any obligation to pay interest. But when I say this I do not wish to preclude the Appellants in any subsequent proceedings from establishing their right to interest if they can do so.

I will go further however and say that in the absence of a contract they could not recover interest.

If English law is to be applied, then no action lies against the Government for damages for a civil wrong. If Turkish law, debts in Turkish law do not carry interest.

The judgment drawn up must be varied so as to make it agree with the judgment given in Court.

BERTRAM, J.: It is clear in this case that the Court never intended to give interest.

Mr. Amirayan's admission clearly did not include interest, and the judgments of the Court were evidently based upon that admission.

In the Court below the claim itself was rejected, and consequently the supplemental claim for interest was never considered.

My own impression is that owing to the long delay in prosecuting the appeal the question of interest escaped the notice of both parties. I repeat therefore what I said in *Dimitriou v. The King's Advocate,* that the order for the payment of interest appeared in our judgment by an oversight.

That we have power to correct our judgment in such a case is shown by the two cases cited by the King's Advocate.

In the first, *In re Swire* (1885) 30 Ch.D., 246, Lindley, L.J. said:

" It appears to me, therefore, that if it is once made out that the " Order, whether passed and entered or not, does not express the Order " actually made, the Court has ample jurisdiction to set that right, " whether it arises from a clerical slip or not."

And Bowen, L.J., said:

" I think the true view is, as stated by the Lord Justice Cotton, " that every Court has inherent power over its own records as long " as those records are within its power, and that it can set right any " mistake in them. It seems to me that it would be perfectly shocking " if the Court could not rectify an error which is really the error of its " own minister. An Order, as it seems to me, even when passed and " entered may be amended by the Court so as to carry out the intention " and express meaning of the Court at the time when the order was " made, provided the amendment be made without injustice or on terms " which preclude injustice."

In the other case, *Hatton v. Harris* (1892) A.C., on page 55, Lord Herschell said:

" There is one observation which I ought to make, and it is this, " that there may possibly be cases in which an application to correct " an error of this description would be too late. The rights of third " parties may have intervened, based upon the existence of the decree " and ignorance of any circumstances which would tend to show that " it was erroneous, so as to disentitle the parties to the suit or those " interested in it to come at so late a period and ask for the correction " to be made. There might be a ground of that description which

" would induce the tribunal to say, 'No; although this is a slip, and " one which would have been corrected at the time, you have delayed so " long that you have allowed rights to grow up which it would now be " unjust to prejudice, and it is impossible to make the correction.' " But, my Lords, no facts were put before Your Lordships in the " present case which would justify the Court in so refusing to correct " the error."

The only limitation therefore of the power of the Court to correct its records would seem to be cases where some equitable right has intervened, but nothing of the sort is suggested in this case.

Personally, I should not be disposed to correct a judgment on the ground that it gave a consequential remedy which was asked for, but not considered by the Court, unless I was convinced that the judgment of the Court in granting this consequential remedy, was in fact erroneous.

Was therefore interest legally due in this case? The answer to this question is the same whether the case is to be determined by English or by Turkish law.

In my view, English law applies, but as the Chief Justice has expressed a contrary opinion, I will consider Turkish law first.

Clearly under Turkish law, or general principles, no interest is payable. Interest was denounced by the Prophet as a sin, and I believe I am right in saying that in the administration of Estates in the Sher' Court, interest is never allowed. Certain breaches have been made in this principle in modern times (See *Savvas Pasha, Theorie du Droit Musulman*, Vol. II, p. 559, seqq.) and interest is now even limited by statute, but these breaches have not gone to the extent of establishing the contrary principle that failure to pay a debt carries with it by implication an obligation to pay interest on that debt.

The articles of the Appendix to the Commercial Code cited by Mr. Artemis merely apply to cases within the jurisdiction of the Commercial Court the principles of the French law applied to the same cases in France. The reason is that the Commercial Code and the Commercial Courts were established to deal with questions at issue between merchants, and by the custom of merchants interest is payable on commercial debts on the conditions laid down in those articles. They do not in any way establish a general right to interest against persons who make default in the payment of debts. This has already been laid down in the case of *Chacalli v. Kalloarena*, 3 C.L.R., 246.

As to English law, the position is clearly settled by the case of *L. C. and D. Railway Co. v. S. E. Railway Co.* (1893) A.C., 429, cited by the

King's Advocate. It appears by that case that in English law interest cannot be recovered by way of damages for the wrongful detention of a debt. The only cases in which interest on a debt may be allowed in English law, in an action for the debt, are three:

1. Where a contract provides for it.
2. Where there is a debt or a certain sum payable at a certain time by virtue of some written instrument.
3. Where a demand has been made in writing for the amount with notice that interest will be claimed.

Clearly therefore interest is not payable in this case under English law.

I agree therefore that the application must be allowed, without prejudice to the right of the Appellants in any subsequent proceedings to show any circumstances establishing a right to interest, which were not brought before the District Court in this case.

Application granted.

TYSER, C.J. & BERTRAM J.
1910
May 23

[TYSER, C.J. AND BERTRAM, J.]

PHOKION TANO AND EUGENIA TANO
v.
GEORGI TANO AND OTHERS.

FAMILY LAW—SUCCESSION—ADOPTION—RIGHT OF SUCCESSION OF FOREIGNER TO MULK IMMOVEABLES—STATUS—PRINCIPLES OF OTTOMAN LAW GOVERNING STATUS OF NON-MOSLEM SUBJECTS AND FOREIGNERS—INTERPRETATION OF LAWS—PRINCIPLES GOVERNING INTERPRETATION OF WILLS AND SUCCESSION LAW, 1895—" LAWFUL CHILDREN "—WILLS AND SUCCESSION LAW, 1895, SEC. 43—HISTORY AND SOURCES OF THE LAW—REFERENCE TO OFFICIAL TRANSLATIONS OF LAWS AFFECTING SPECIAL COMMUNITIES.

The adopted child of a French father, though legally adopted according to the law of France, is not entitled to succeed to the mulk immoveables of his father situated in Cyprus as a " lawful child " under the provisions of the Wills and Succession Law, 1895.

According to Ottoman law, on the death of a non-Moslem Ottoman subject, or (in the case of immoveables) of a foreigner, questions as to the categories of heirs upon which his property devolves are determined by the law of the Ottoman State, i.e., the Sher', but questions as to whether any person possesses the status of any such category are determined by the law of the subject's religious community, or by that of the foreigner's State.