[HADJIANASTASSIOU, A. LOIZOU, MALACHTOS, JJ.]

THE TURKISH BANK OF NICOSIA LTD.,

Appellants-Plaintiffs,

v.

MUSTAFA H. CUKUROVA AND OTHERS,

Respondents-Defendants.

(Civil Appeal No. 5152).

Interest—Judgment debt—Compound interest—Court not entitled to award compound interest—Words "interest upon interest" aptly describe "compound interest"—Section 33 of the Courts of Justice Law, 1960 (Law 14 of 1960).

Interest—Judgment—Merger of cause of action in—Debt due under current bank account—Interest exceeding the amount of original debt—Reduced in order to comply with section 3(1) of the Interest Law, Cap. 150—Judgment on the amount so reduced without interest—To do otherwise would in effect violate both the provisions of the Interest Law, Cap. 150 and of s. 33(3) of the Courts of Justice Law, 1960 and it would amount to giving "interest upon interest".

Words and Phrases—"Interest upon interest" in section 33(3) of the Courts of Justice Law, 1960—"Compound interest".

On October 20, 1959 the appellant-plaintiff Bank opened a current bank account in favour of respondents-defendants 1 and 2 with respondents-defendants 3 and 4 as sureties. The rate of interest was agreed at 8% per annum but the bank, acting under paragraph 3(a) of their contract modified the rate of interest from 8% to 9% as from January 1, 1971.

The original loan was for £400. The defendants paid nothing against the loan or interest and the plaintiff Bank brought an action claiming £1,033.670 mils. As the interest payable since 1959 exceeded the original amount of £400 the Bank, acting in accordance with section 3(1)* of the Interest Law,

* Section 3(1) provides as follows:- "The amount which may be recovered by action as arrears of interest on any debt or obligation shall not exceed the amount of the principal debt or obligation in respect of which such interest is payable".

Cap. 150, reduced the said amount of the claim to £800 only. The Bank further claimed interest at 9% on the amount of £400, as from the date of hearing (December 18, 1972) till final payment.

On December 30, 1972, the trial Court awarded an amount of £800 to the appellant Bank but without allowing interest on the judgment as from this date.

The trial Court held that the Bank, having added already on their claim an amount of £400.- interest, which is equal to the capital originally advanced by them, are not entitled to any other interest of whatever description as the recovery thereof is disallowed by the Interest Law, Cap. 150.

Upon appeal counsel for the appellant Bank contended that the Bank was entitled to interest at 9 per cent on the amount of £400.- as from the date of judgment till final payment under the provisions of section 33* of the Courts of Justice Law, 1960 (Law 14/60).

Held, (1) that the Court has no power to award compound interest and that the words "interest upon interest" in section 33(3) of the Courts of Justice Law, 1960, (Law 14/60) aptly describe "compound interest". (See section 33 of Law 14/60 and section 3 of the English Law Reform (Miscellaneous Provisions) Act, 1934).

(2) That once the agreement to pay interest at 9 per cent after the day fixed for the principal has merged into the judgment, from that time the amount of £800.- became the sole debt from the respondents to the appellants; that the device suggested by counsel that he was entitled to claim judgment at 9 per cent only on the original sum of £400.- contravenes even the principles as to merger relied upon by him; that, therefore, once the amount of £1,033.- was reduced to the sum of £800.- in order to comply with the provisions of section 3(1) of Cap. 150, the appellants are no longer entitled to claim interest on that sum because the giving of interest on the amount of the debt would in effect violate both the provisions of the Interest Law, Cap. 150 and of section 33(3) of Law 14/60 and it would amount to giving "interest upon interest"; and that, accordingly, the appeal will be dismissed.

Appeal dismissed.

* Quoted at pp. 238 - 239 *post.*

Cases referred to:

Dunn Trust Ltd. v. Feetham [1936] 1 K.B. 22;

Crosskill v. Bower, Bower v. Turner [1863] 32 L.J. Ch. 540 at p. 544;

Savva v. Ambiza (1967) 1 C.L.R. 24 at p. 27;

Bushwall Properties Ltd. v. Vortex Properties Ltd. [1975] 2 All E.R. 214 at p. 225;

Miliangos v. George Frank (Textiltes) Ltd. (No. 2) [1976] 3 All E.R. 599;

In re *European Central Railway Company. Ex parte Oriental Financial Corporation* [1876] 4 Ch. D. 33;

Ex parte Fewings. In re Sneyd [1884] 25 Ch. D. 338.

Appeal.

Appeal by plaintiffs against the judgment of the District Court of Paphos (Boyiadjis, D.J.) dated the 30th December, 1972 (Action No. 1047/72) whereby they were awarded the sum of £800.-, but without any interest thereon, due to them by the defendants on a current bank account.

M. A. Hakki, for the appellants.

No appearance, for the respondents.

Cur. adv. vult.

The judgment of the Court was delivered by:-

HADJIANASTASSIOU, J.: This is an appeal from the judgment of a Judge of the District Court of Paphos dated December 30, 1972, in which he awarded an amount of £800 to the plaintiffs, the Turkish Bank of Nicosia Ltd., against all the defendants jointly and severally but without allowing interest on the said judgment as from that date.

The facts are simple and are these:- The Turkish Bank of Nicosia Ltd. is a registered bank and is carrying out banking business in Cyprus. This action was filed against the four defendants jointly and severally, claiming originally (a) an amount of £1,033.670 mils being due to the plaintiffs; and (b) 9% interest on £400 only from December 29, 1971 until final payment. The amount claimed

was alleged to be due on a current bank account (Paphos branch) opened in favour of defendants No. 1 and 2 as a result of a contract entered between the parties on October 20, 1959, for a period of one year. Defendants 3 and 4 guaranteed all the obligations of defendants 1 & 2 and the contract was signed by all parties concerned.

There is no doubt that the contract in question is the usual banking arrangement for facilities afforded by banks to their customers in opening a current account, and the bank was authorised by the defendants in the following terms:-

> "(1) Any debit balance of the said current account will bear interest at the rate of 8% per annum, chargeable at the end of June and at the end of December of each year":

And under paragraph 3:-

> "You will have the right (a) to modify the rate of interest and of the commission . . . (c) to close at any moment the said current account by notice in writing, calling upon us to pay within 3 days the debit balance due together with the interest to be due thereon to the day of payment and together with any sum that may be due by way of commission and/or charges in such a case".

In accordance with paragraph 3 of the statement of claim, it was alleged that the bank, by a written notice sent to the defendants, modified the rate of interest from 8 to 9% as from January 1, 1971, relying on paragraph 3(a) of the contract. (See *exhibit* 1).

On October 10, 1972, becaused the defendants, though served, failed to enter an appearance, the plaintiffs applied for judgment against all the defendants relying on 0.17 rr. 2 and 3 and 0.48 of the Civil Procedure Rules.

On the date of trial, Mr. Alper Osman of Paphos, an employee of the bank, in charge of the current accounts department, said that although the original loan was only £400, in adding the interest payable since 1959 it exceeded that amount, and he reduced the amount of £1033.670 to a claim of £800 only, because the interest payable

since 1959 exceeded the original amount of £400. He further claimed interest at 9 per cent on that amount of £400, as from December 18, 1972, the date he was giving evidence before the Court till final payment. The reduction was made in accordance with the provisions of s. 3(1) of the Interest Law, Cap. 150.

The main contention of counsel, both before the learned trial Judge and before us was that the bank was entitled to interest at 9 per cent on the amount of £400 as from the date of judgment till final payment under the provision of s. 33 of Law 14/60, once there was a merger of the cause of action in the judgment. He cited no authority but he relied on 22 Halsbury's Laws of England, 3rd edn. p. 781 para. 1661.

The trial Judge, having heard the contentions of counsel and having addressed his mind to the law, delivered his reserved judgment and made these observations regarding the construction to be placed on the provisions of s. 33(1) of Law 14/60:-

> "I am of opinion that upon a correct interpretation of section 33(1) of Law 14/60, the fact that on certain date judgment is entered by the Court on any debt or obligation carrying agreed interest, does not in any way affect either the right of the creditor to recover the otherwise legally permissible agreed rate of interest up to the date of payment, or the obligation of the debtor to pay the otherwise legally permissible agreed rate of interest up to the date of payment, or the obligation of the debtor to pay the otherwise legally permissible agreed rate of interest to his creditor irrespective of whether or when judgment was entered by the Court on such debt or obligation.
>
> The words 'maximum rate of interest' appearing in the proviso to sub-section (1) of section 33 of the Courts of Justice Law, 1960, should be construed to mean 'maximum rate or total amount of interest'.
>
> The plaintiffs, having added already on their claim an amount of £400.- interest which is equal to the capital originally advanced by them, are not entitled to any other interest of whatever description as the

recovery thereof is disallowed by the Interest Law, Cap. 150".

There is no doubt that interest is the return or compensation for the use or retention by one person of a sum of money belonging to or owed to another. (See re *Dunn Trust Ltd. v. Feetham* [1936] 1 K.B. 22). Interest of course accrues *de die in diem* even if payable only at intervals, and is, therefore, apportionable in point of time between persons entitled in succession to the principal. By the universal custom of bankers, a banker has the right to charge simple interest at a reasonable rate on all overdrafts. (*Crosskill v. Bower, Bower v. Turner*, [1863] 32 L.J. Ch. 540 at p. 544).

The question of interest is regulated by the Interest Law Cap. 150 which was enacted on the 16th November, 1944, and is a law to make better provision for the rate of interest on debts and obligations. Section 2 reads as follows:-

> "The rate of interest on any debt or obligation contracted after the 16th day of Novemer, 1944, shall not exceed nine per centum per annum and no interest at a greater rate shall be recovered on any such debt or obligation".

Section 3(1) is in these terms:-

> "The amount which may be recovered by action as arrears of interest on any debt or obligation shall not exceed the amount of the principal debt or obligation in respect of which such interest is payable".

On December 17, 1960, the Courts of Justice Law 1960 (No. 14 of 1960) was promulgated and is a law providing for the constitution, jurisdiction and powers of the Courts of the Republic and for other purposes relating to the administration of justice. Section 33(1) deals with interest on debts etc., and on judgments and it says that:-

> "In any proceedings tried in any court for the recovery of any debt upon which interest is payable whether by virtue of any agreement or otherwise as by law provided the court shall award interest at the rate agreed upon or otherwise as by law provided,

for the period commencing on the date when such interest became payable until final payment:

Provided that such rate or interest shall not exceed the maximum rate of interest allowed by any law in force for the time being".

And subsections (2) and (3) read:-

"(2) Every judgment shall, unless other provision is made in the judgment under sub-section (1) carry interest at the rate of four per centum per annum from the date on which the judgment is pronounced until the same shall be satisfied:

Provided that nothing in this subsection contained shall apply to any judgment pronounced before the 16th day of November, 1944, and every such judgment shall carry such interest as may be specified therein and in accordance with the terms thereof.

(3) Nothing in this section contained shall authorise the giving of interest upon interest".

The first case decided under the Courts of Justice Law, 1960 is *Elli Georghiou Savva v. Nicos Ioannou Ambiza,* (1967) 1 C.L.R. 24. Josephides, J., having dealt with the provisions of the Interest Law, Cap. 150 and the aforesaid Courts of Justice Law, said at p. 27:-

"It is conceded by the creditor that if interest at 9 per cent per annum is allowed to be charged on the first year's interest then the sum of £44.- would have been charged and recovered by the creditor in excess of the rate of 9 per cent per annum. Apart from this sum no other interest on interest is claimed. Section 2 of the Interest Law provides expressly that the rate of interest on any debt shall not exceed 9 per cent per annum, and that no interest at a greater rate shall be recovered on any such debt; so that, if the Court allows interest to be charged on the first year's interest on the debt the net result will be that the total amount recovered by the creditor will include interest on the debt at a rate exceeding 9 per cent per annum, which would exceed the maximum rate of interest allowed by law and the excess is not recoverable.

On this construction of the Law, I am of the view that the sum of £44.-, which, as already stated, is interest at the rate of 9 per cent per annum on the first year's interest at 9 per cent per annum, is not recoverable and should be deducted from the judgment debt. I would accordingly allow the appeal to that extent and vary the Judgment of the Court below by the deduction of £44.-".

The question of interest in England is regulated by the Law Reform (Miscellaneous Provisions) Act 1934 and section 3(1), so far as material, provides:-

> "In any proceedings tried in any court . . . for the recovery of . . . damages, the court may, if it thinks fit, order that there shall be included in the sum for which judgment is given interest at such rate as it thinks fit on the whole or any part of the . . . damages for the whole or any part of the period between the date when the cause of action arose and the date of judgment: Providing that nothing in this section—(a) shall authorise the giving of interest upon interest...."

In the recent case of *Bushwall Properties Ltd. v. Vortex Properties Ltd.*, [1975] 2 All E.R. 214, Oliver, J., dealing with the proviso to s. 3(1) (a) of the 1934 Act said at p. 225:-

> "There is a further point in this connection which counsel for the defendants has raised. The amended statement of claim claimed interest under the Law Reform (Miscellaneous Provisions) Act, 1934. Section 3(1) of the 1934 Act confers on the court a discretionary power to award interest on damages. Counsel for the defendants draws attention to the fact that the damages here claimed are calculated by reference to interest paid or lost and relates that fact to the provisions of proviso (a) to s. 3(1) where it is provided that 'nothing in this section . . . (a) shall authorise the giving of interest upon interest . . .'. Thus, he argues, in this case the court has no statutory discretion. I cannot accept this submission. It appears to me that the proviso was clearly aimed at the sort of case where an interest-bearing debt is sued for (for instance, a mortgage debt or an instalment

of interest in arrear). In such a case the court is not to award interest on such part of the sum claimed as represents contractual interest. Although what is claimed here is simply a replacement of a sum of money, the quantum of which is calculated by reference to interest which the plaintiffs have had to pay, the sum so claimed is not in any relevant sense interest itself; it is the sum payable by way of damages for breach of contract, and I see no reason why it should not be capable of carrying interest in the ordinary way".

In *Miliangos v. George Frank (Textiles) Ltd. (No. 2)*, reported in [1976] 3 All E.R. 599, Bristow J., dealing with the construction of section 3(a) of the Law Reform (Miscellaneous Provisions) Act 1934, said at pp. 602, 603:-

"There is this additional difficulty: s. 3(1) (a) of the Law Reform (Miscellaneous Provisions) Act 1934 excludes the giving of interest on interest from the power to award interest between the date when the cause of action arose and the date of judgment. If to award interest at a rate which includes compouding is to award interest on interest, the statute prevents an award at the rate which the plaintiff actually paid, always assuming that the English law applies. To award simple interest at a rate to produce the equivalent result is, in my judgment, equally unacceptable, because it is doing by the back door what the statute says you must not do by the front door. The construction of s. 3(1) (a) was considered by Oliver J in *Bushwall Properties Ltd. v. Vortex Properties Ltd.* [1975] 2 All E.R. 214. He expressed the view that the proviso is aimed at the sort of case in which an interest-bearing debt is sued for, and prevents an award of interest on that part of the amount claimed which represents contractual interest. But Oliver J did not have to direct his mind to whether proviso (a) deprived the court of the power to award compound interest. In my judgment 'interest upon interest' aptly describes 'compound' interest, and in my judgment the proviso has, in truth, been so applied ever since 1934 when the provision was passed. There

is no example of the High Court exercising the jurisdiction bestowed by the 1934 Act, as opposed to the jurisdiction inherited from the courts of equity, by awarding other than simple interest . . . The *lex fori*, in the form of s. 3(1) of the 1934 Act, empowers me to award interest at my discretion, apart, as I hold, from compound interest".

Having established that under the proviso to section 3 of the Law Reform (Miscellaneous Provisions) Act 1934 and section 33 of the Courts of Justice Law 1960 in England and in Cyprus deprive the court of the power to award compound interest and that the wording "interest upon interest" aptly describe "compound interest", we turn now to consider whether because of the merger of the cause of action in the judgment the appellants are entitled to 9 per cent interest on the amount of £400, and not on the amount of the judgment. According to 8 Halsbury's Laws of England (Third Edition) at p. 221 para. 379:

"When judgment has been recovered in a court of record the original cause of action is merged in the judgment—transit in *rem judicatam*—and a second action cannot be brought in respect of the same cause of action; (*Aman v. Southern Rail Co.* [1926] 1 K.B. 59 C.A.) but the judgment, so long as it remains unsatisfied, does not extinguish any remedy except the particular cause of action in respect of which it was recovered, and the creditor is not precluded by it from enforcing any collateral security which he may have taken (*Economic Life Assurance Society v. Usborne*, [1902] A.C. 147, H.L.). A judgment in an action for a principal debt does not preclude the creditor from bringing a subsequent action for interest which had accrued due prior to the date of the judgment (*Florence v. Jenings* [1857] 2 C.B.N.S. 454) nor conversely is a judgment in an action for interest only a bar to a subsequent action for the principal debt (*Morgan v. Rowlands* [1872], 41 L.J.Q.B. 187). A judgment in an action for a principal debt is, however, a bar to any claim for subsequent interest, otherwise than on the judgment".

In re European Central Railway Company. Ex parte

Oriental Financial Corporation, [1876] 4 Ch. D. 33 C.A., "A railway company, in the year 1864, issued debentures by which they bound themselves to pay a principal sum one year after the date of issue, with interest at 6 per cent., and charged the railway and undertaking with the payment of the principal sum and interest.

Soon after the expiration of the year a debenture holder brought an action against the company, and recovered judgment for the principal debt, interest, and costs. The company was ordered to be wound up in 1868, and the debenture holder was admitted to prove for the judgment debt and interest at 4 per cent. The debenture holder claimed to prove for an additional 2 per cent on the original amount of the debenture from the date of the judgment:-

> Held (affirming the decision of Bacon, V.C.), that the original debt was merged in the judgment, and that the claimant was only entitled to interest on the judgment at 4 per cent".

Bramwell J.A., delivered the judgment of the Court and said at pp. 37 and 38:-

> "We are all of opinion that the order of the Vice-Chancellor is right, and ought to be affirmed. Each of the instruments upon which the Appellants found their claim states that the European Central Railway Company bind themselves, their successors and assigns, to pay to Holden, his executors and assigns, the sum of £1000, with interest at 6 per cent per annum, the principal to be paid on the 11th of October, 1865, and interest to be payable in the meantime half yearly, at the several dates expressed in the interest warrants thereunto annexed, until the repayment thereof . . . The creditors brought their action, and on the 25th of November, 1865, recovered judgment on their twenty bonds for the principal sum and a half a year's interest, together with a small sum by way of damages for the detention of the debt after the 11th of October, 1865, and costs, in all £20,636. 8s. 4d. From that time forth that sum, by virtue of the Judgment Act, carried interest at 4 per cent per annum. From that time that became the sole debt from the obligors to the Appellants. They were entitled to en-

force payment by execution of that sum, with interest at 4 per cent., and they could enforce nothing more. There was no process by which they could get from the obligors any more than that sum and interest at 4 per cent; that was the sole debt between the parties.

Now, it is contended that, although there is no debt, the Appellants are entitled to something different by virtue of the clause in the debenture, by which the railway and undertaking are charged with the principal sum and interest at 6 per cent. If no action had been brought the Appellants might have been entitled to prove for 5 per cent., or perhaps even 6 per cent by way of damages. But although they have got their judgment, they still claim for the further interest of 2 per cent, by virtue of their charge. It seems to us only necessary to state their claims to shew that they cannot have that right. Because by the debenture the undertaking in terms is only charged with £1000 and one sum of £60 for interest, and though if nothing had happened not only the sums charged but damages for their nonpayment might be claimed, here the original debt is gone, transit in *rem judicatam,* a fresh debt is created with different consequences. The judgment is now the charge. There cannot be two debts, one leviable by execution, the other charging the undertaking. There cannot be a charge for more than is due. It is said that it is a hardship upon the Appellants, because they are worse off by reason of their diligence in bringing the action. But they were not compelled to bring the action; they brought it in order to obtain the advantage of an execution. If, therefore, there has been any hardship, it was not inflicted upon them by the law so as to make us doubt whether the law could be so".

In *Ex parte Fewings. In re Sneyd,* [1884] 25 Ch.D. 338: "A mortgage deed contained a covenant by the mortgagor for payment of the principal sum on the expiration of six months next after a specified day, together with interest thereon at 5 per cent per annum for the six months. And there was a further covenant by the mortgagor that, if the principal sum, or any part thereof, should remain unpaid after the expiration of the six months, the mortgagor would, so long as the same sum or any part thereof

should remain unpaid, pay to the mortgagee interest for the principal sum, or for so much thereof as should for the time being remain unpaid, at 5 per cent per annum. After the expiration of the six months, the mortgagee recovered judgment against the mortgagor on the covenant for the principal sum and interest in arrear.

Held, that, the covenant being merged in the judgment, the mortgagee was, as from the date of the judgment, entitled only to interest on the judgment debt at the rate of 4 per cent, and was not entitled under the covenant to interest at the rate of 5 per cent on the principal sum.

Decision of Bacon, C.J., reversed".

Cotton, L.J., delivering his own judgment said at pp. 349 - 350:-

"The mortgagee brought an action on this covenant, and recovered judgment for the principal sum, and interest thereon at 5 per cent up to the date of the writ, and costs, and the debt which was stated by the debtor as being due to her was the amount of the judgment debt, with interest thereon from the date of the judgment to the date of the presentation of the petition, calculated, not at the rate of 5 per cent., but at the rate of 4 per cent., that being the rate of interest which a judgment debt carries by statute. It is contended that this calculation was erroneous, inasmuch as it is based on the interest being due at 4 per cent., and not at 5 per cent., from the date of the judgment.

In my opinion that contention is unfounded, for so soon as the judgment was obtained, it put an end to the liability under the covenant to pay the £2200, and the debt became due on the judgment, not under the covenant.

But it is said that, though the liability under the covenant to pay the £2200 is merged in the judgment, yet here there is a further and separate covenant to pay interest at 5 per cent so long as the £2200. or any part thereof, shall remain unpaid, and no part of £2200 has yet been paid.

In my opinion the true construction of that covenant is this, that interest at the rate of 5 per cent shall be paid so long as any part of the £2200 remains due under the covenant, so long as the covenant for payment of the £2200 remains in force, so as to enable Mrs. Nutting to sue upon it and to enforce payment of that sum or any part thereof. But that covenant is now at an end; the liability under it for the £2200 is gone, it is merged in the judgment, and it cannot be said that, notwithstanding that the covenant to pay the £2200 is gone, there is a separate covenant to pay interest at 5 per cent".

Then his Lordship said at p. 351:

"Another objection is this. It is said that the debt, as shewn in the statement of affairs, did not include interest for the period between the date of the writ in the action and the date of the judgment, the Plaintiff not having signed judgment for that interest. In my opinion that objection cannot prevail, because the judgment might have been drawn up on the cause of action which the creditor was prosecuting, *viz.*, the covenant, so as to include interest down to the date of the judgment, and not merely to the date of the writ. Of course a creditor cannot be compelled to take interest down to the date of his judgment, and, if he does not choose to claim it, he cannot afterwards bring a separate action for the interest which he might have obtained in his first action, but which he omitted to claim".

It seems to us that once the agreement to pay interest at 9 per cent after the day fixed for the principal has merged into the judgment, from that time the amount of £800 became the sole debt from the respondents to the appellants. With respect, the device suggested by counsel that he was entitled to claim judgment at 9 per cent only on the original sum of £400 contravenes even the principles as to merger relied upon by him and quoted earlier in this judgment. In our view, therefore, once the amount of £1.033 was reduced to the sum of £800 in order to comply with the provisions of s. 3(1) of Cap. 150, the appellants are no longer entitled to claim interest on that sum because the giving of interest on the amount of the

debt would in effect violate both the provisions of the Interest Law, Cap. 150 and of subsection 3 of section 33 of Law 14/60 and it would amount to giving "interest upon interest".

Having reached this conclusion, we do not share the criticism or complaint of counsel that it is a hardship upon the appellants because they are worse off after receiving judgment. The appellants in our opinion have themselves to blame for waiting such a long time in bringing the action. It seems to us that if there has been any hardship, it was not inflicted upon them by the law which is clear and unambiguous.

For the reasons we have advanced, we would affirm the judgment of the learned trial Judge and dismiss the appeal with no order as to costs.

Appeal dismissed.
No order as to costs.