

FOURTH SUPPLEMENT TO THE  
GIBRALTAR GAZETTE L.R. 9/78.

No. 1,809 of 10th MAY, 1979.

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LAW REPORTS

*Note: These Reports are cited thus —  
(1978) Gib. L.R.*

**THE OCEAN BAY: Parker v. Owners of m.v. Ocean Bay**

Supreme Court  
Spry, C. J.  
8 December 1978

*Interest—judgment in default of appearance — whether interest may be awarded for period prior to judgment*  
*Interest — judgment for debt — appropriate rate of interest.*

In an action for debt, judgment was given in default of appearance. The plaintiff asked for interest.

HELD: (i) The court has discretion to award interest whether the action goes to trial or judgment is given in default.

(ii) In present circumstances, the appropriate rate is that prescribed for interest on judgment debts.

Cases referred to

*Wallersteiner v. Moir* (No. 2) [1975] 1 Q.B. 373  
*Gardiner Steel Ltd v Sheffield Brothers* [1978] 3 All E.R. 399  
*Jefford v. Gee* [1970] 2 Q.B. 130  
*The Fumabashi* [1972] 1 W.L.R. 666.  
*Cremer v. General Carriers S.A.* [1974] 1 W.L.R. 341

**Action**

This was an action to recover wages due from and disbursements made on behalf of the defendants. Judgment was given on 8 December 1978 but the question of interest was reserved.

H. K. Budhrani for the plaintiff

12 December 1978: The following judgment was read—

On 8 December 1978 I gave judgment for the plaintiff in an action in rem for £752.72 for wages and disbursements. Judgment was given in default of appearance under RSC Ord. 75, r.21 (3). At the same time, Mr. Budhrani, who appeared for the plaintiff, asked for interest but withdrew his request when I referred him to note 7A to Ord. 6, r.2. Later, on the same day, before the judgment had been entered, Mr. Budhrani sought to have the proceedings re-opened. I acceded to his request and, in the event, varied my judgment by adding the words "The question of interest is reserved". I now give my decision on that question.

At the first hearing, Mr. Budhrani and I had been looking at the 1976 Edition of the Supreme Court Practice, in which, referring to s.3 of the Law Reform (Miscellaneous Provisions) Act, 1934, it is said that

"interest under this section can only be awarded in proceedings that are 'tried', and therefore cannot be awarded on a judgment obtained in default of appearance....."

Subsequently, he had seen the 1979 Edition, where that passage has been replaced in the light of *Wallersteiner v. Moir* (No. 2) (1), in which Lord Denning remarked, obiter, that too narrow a construction had been placed on the word "tried". Mr. Budhrani also referred me to *Gardner Steel Ltd. v. Sheffield Brothers* (2), where it was expressly held that interest could be awarded under s.3 in proceedings under RSC Ord. 14. It is not necessary for me to rely on these authorities, because the problem which existed in England does not exist in Gibraltar. Section 3 of the Law Reform (Miscellaneous Provisions) Act, 1934, begins

"In any proceedings tried in any court of record for the recovery of any debt..."

The corresponding section in Gibraltar is s. 14 of the Contract and Tort Ordinance, which begins

"In any proceedings for the recovery of any debt..."

The word "tried," which gave rise to the difficulty in England,

(1) [1975] 1 Q.B. 373.

(2) [1978] 3 All E.R. 399.

was omitted from the Gibraltar Ordinance and it is clear that the court here has a discretion to award interest whether the action comes to trial or judgment is given in default.

It remains only to consider whether the discretion should be exercised in this case, and if so, at what rate and from what date interest should be awarded. There seems to be a lack of authority on when the discretion should be exercised but it seems to me that, in the absence of special circumstances, the plaintiff in an action for debt should be awarded interest. He has been deprived of money to which he was entitled; he may have had to borrow at interest or alternatively he has been deprived of the opportunity of using the money to advantage.

As regards the rate of interest, I have considered what has been said on this subject in *Jefford v. Gee* (1), *The Funabashi* (2) and *Cremer v. General Carriers S.A.* (3) I think that in a case such as this, and having regard to the current prescribed rate of interest on judgment debts, there is no good reason for adopting any other rate for the interest before judgment.

Although logically it might seem proper to provide for the interest on different items to run from different dates, the amount involved would not justify a complicated exercise.

Accordingly, the plaintiff is awarded interest on the decretal amount at 10 per centum per annum from 11 November 1977, when that amount accrued due, until 8 December 1978, when interest under the Judgments Act, 1838, began to run.

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(1) [1970] 2 Q.B. 130.

(3) [1974] 1 W.L.R. 341.

(2) [1972] 1 W.L.R. 666.