]WILSON, P., ZEKIA, VASSILIADES AND JOSEPHIDES, JJ.]

IOANNIS IOSIF HJIHANNI,

Appellant

v.

ELIAS HANNI YIOUSELLIS,

Respondent

(*Civil Appeal No.* 4441).

Practice—Error and mistake—Common mistake—Bona fide error by the parties in calculating interest due—Error embodied in the judgment of the Court—In this case the Agricultural Debtor's Relief Court, established under the Agricultural Debtors Relief Law, 1962—*Whether error can be corrected—The "slip rule"—Order* 25, *rule* 6, *of the Civil Procedure Rules—Corresponding to the English Order* 28, *rule* 11 *of the* R.S.C.—*Correction allowed in view of the special provisions of the said law and of the fact that the Relief Court* (supra) *is an ad hoc tribunal and of the special facts of the case in hand.*

The debtor (respondent) filed an application with the Agricultural Debtors Relief Court under the provisions of section 8 of the Agricultural Debtors Relief Law, 1962, and the Rules made thereunder, for relief under that law. In the second schedule to the application, he stated that the sum of money which he owed to the creditor (appellant) was (*a*) under item No. 1, principal £1,335.250 mils plus interest at the rate of 9% per annum from 1956, total amount of principal and interest £1,818. When the application came on for hearing before the Relief Court Judge on the 28th March, 1963, both parties were represented by counsel. The creditor then made a statement of the amount due to him which was admitted by the debtor as follows : (*a*) Mortgage bond dated 11.9.56 expiring on 10.9.57 for £1,335.250 mils plus interest 9% per annum from expiration, total £1,613,000 mils. The order of the Relief Court Judge was given on that basis. Soon after the above statements were made in Court and the decision signed by the trial Judge, the creditor discovered that he had made an error in the calculation of the interest due to him on the said bond to the extent of about £302. He applied to the Relief Court for correction of the judgment under O. 25, r. 6, of the Civil Procedure Rules which apply to the Relief Court proceedings under r. 10 of the Agricultural Debtors Relief

Rules, 1963 " so far as may be practicable ". The application for correction was opposed by the debtor and the trial Judge, after hearing argument, ruled that the Court could not entertain the application for correction of its decision as the Court was not empowered by the Rules of Court to make such a correction.

The creditor appealed against the dismissal of his application and the High Court in allowing the appeal :—

Held, (1) in dealing with this matter we should make it clear that we are deciding this case having regard to the special provisions of the Agricultural Debtors Relief Law and the fact that this is an *ad hoc* tribunal established by that law for the purpose of fixing the annual instalments by which debts due by farmers are to be paid, and reducing, where the Court so deems fit, the rate of interest to not less than five per cent per annum.

(2) We must say that the matter is not free form doubt and that, had it not been for the case of *Butler* v. *Purvis* (1888) 56 L.T. 131, this Court would have felt great difficulty in coming to its decision. Although the full report of this case is not available in the Court library, a digest is given in the " Pleading and Practice " volume of the English and Empire Digest at p. 474, paragraph 1549. It was held in that case that the Court had jurisdiction to correct an error in the calculation of interest, under the English Order 28, rule 11 (which corresponds to our Order 25, rule 6), in a judgment arising f om an accidental slip although the time for appealing from the judgment had expired.

The facts, as stated in the Digest, are that at the trial the judgment allowed defendant to set off a sum named for interest paid on account of plaintiff. The amount was arranged between the parties on the faith of a statement made *bona fide* by defendant and accepted by plaintiff as accurate, that defendant had made the payment of interest from a certain date. After the judgment had been drawn up and the time for appealing had expired, plaintiff found that the interest allowed by the judgment had for two years already been allowed to the defendant in account.

(3) In the present appeal the appellant contends that he failed to calculate the interest for 2 1/2 years which amounts to about £302, and the respondent concedes that there is a miscalculation, that is to say, this is a case which proceeded on a

mutual mistake. The respondent himself had already declared on oath in his original application to the Court that the amount due by him to the claimant on this debt in July, 1962 was £1,818 and not £1,613, which sum was stated by the creditor before the trial Court on the date of hearing (March 1963) ; and the respondent, who was present in Court, admitted the sum of £1,613 and kept silent as to the difference.

(4) On the special facts of this case we are of the view that the Relief Court Judge had power to entertain the application under the provisions of the slip rule, Order 25, rule 6, subject to verification of the actual amount of interest due. We accordingly remit the case to the Judge to entertain the application after re-opening, if necessary, the matters connected with all or any of the debts of the respondent which were settled at the hearing of the 28th March, 1963.

(5) We are of the view, that, as all these proceedings are due to the error of the appellant, we should not allow him the costs of this appeal, and we accordingly order that each party should bear his own costs of appeal. As regards costs thrown away and future costs, if any, this matter is left in the discretion of the Relief Court Judge.

Appeal allowed. Each party to pay his own costs of appeal.

Cases referred to :

Butler v. *Purvis* (1888) 56 L.T. 131 *applied.*

Appeal.

Appeal against the judgment of the Agricultural Debtors Relief Court of Kyrenia (Attalides Ag. D.J.) dated the 16.5.63 (Application No. 55/62) dismissing an application for an order directing the amendment of the judgment, in the above application, dated 28.3.63 in respect of the debt due by the debtor to the creditor.

A. Liatsos for the appellant.

X. Syllouris for the respondent.

The facts sufficiently appear in the judgment of the High Court.

WILSON, P. : Mr. Justice Josephides will deliver the judgment of the Court.

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YIOUSELLIS
—
Josephides, J.

JOSEPHIDES, J. : This is an appeal from the decision of the Judge of the Agricultural Debtors Relief Court refusing an application for correction of his decision in respect of the debt due by the debtor to the creditor who is the appellant in this case.

The debtor (respondent) filed an application with the Agricultural Debtors Relief Court under the provisions of section 8 of the Agricultural Debtors Relief Law, 1962, and the Rules made thereunder, for relief under the provisions of that Law. In the second schedule to the application, he stated that the sum of money which he owed to the creditor (appellant) was (*a*) under item No. 1, principal £1,335.250 mils plus 9% per annum interest from 1956, total amount of principal and interest claimed £1,818 ; and (*b*) under item 2, £36 principal plus 9% per annum interest, total amount of principal and interest claimed £37.500 mils. Then in column 11 in the same schedule the amount admitted by the debtor as due in respect of item No. 1 was stated to be £1,818 and in respect of item No. 2, £6. This statement of the amounts due by the debtor (respondent) to the creditor (appellant) was verified on oath by the debtor himself on the date of the filing of his application, *i.e.* on the 27th July, 1962.

When the application came on for hearing before the Relief Court Judge on the 28th March, 1963, both the appellant and the respondent were represented by counsel. The appellant then made a statement of the amount due to him which was admitted by the respondent. The relevant part of the Judge's note reads as follows :—

> " Creditor No. 1 produces (*a*) mortgage bond dated 11.9.56 expiring on 10.9.57 for £1,335.250 mils interest 9% per annum from expiration. Bond marked exhibit 1 and returned ; (*b*) bond dated 9.9.1960 expiring 10.9.60 for £36 interest 9% per annum from date bond marked exhibit 2 and returned.
>
> Creditor states that the amount due—
>
> on (*a*) £1,613.000 mils
> on (*b*) 44.000 mils
>
> Total . . £1,657.000 mils
>
> Applicant admits the amount.
>
> Court fixes and approves it."

The Judge, after receiving statements from three other creditors of the respondent as to the amounts due (which were admitted by the respondent) recorded in his minute that " the applicant (debtor) and creditor No. 1 (appellant) have amicably settled payment of debt No. 1 by 12 equal annual instalments with interest at 8% per annum, first instalment payable on the 27.3.64. Court approves ". Finally, the Judge, having dealt with the other debts of the creditor, by his decision made under the provisions of sections 6 and 12 of the Law, ordered as follows :

> " Judgment as per amicable settlement.
> Restraining Order for all the properties of the applicant either disclosed in the application or not to issue. No order as to costs."

Soon after the above statements were made in Court and the decision signed by the trial Judge, the appellant discovered that he had made an error in the calculation of the interest due to him on the bond of £1,335 to the extent of about £302. An application was made to the Court for correction of the decision under Order 25, rule 6, of the Civil Procedure Rules, which apply to the Relief Court proceedings by virtue of rule 10 of the Agricultural Debtors Relief Rules, 1963 " so far as may be practicable ".

This application was opposed by the respondent and the learned Judge, after hearing arguments, ruled that the Court could not entertain an application for the correction of the decision sought to be made as the Court was not empowered by the Rules of Court to make such a correction.

In dealing with this matter I should make it clear that we are deciding this case having regard to the special provisions of the Agricultural Debtors Relief Law and the fact that this is an *ad hoc* tribunal established by that Law for the purpose of fixing the annual instalments by which debts due by farmers are to be paid, and reducing, where the Court so deems fit, the rate of interest to not less than five per cent per annum.

I must say that the matter is not free from doubt and that, had it not been for the case of *Butler* v. *Purvis* (1888) 56 L.T. 131, this Court would have felt great difficulty in coming to its decision. Although the full report of this case is not available in the Court library, a digest is given in the " Pleading and Practice " volume of the English and Empire Digest at p. 474, paragraph 1549. It was

held in that case that the Court had jurisdiction to correct an error in the calculation of interest, under the English Order 28, rule 11 (which corresponds to our Order 25, rule 6), in a judgment arising from an accidental slip although the time for appealing from the judgment had expired.

The facts, as stated in the Digest, are that at the trial the judgment allowed defendant to set-off a sum named for interest paid on account of plaintiff. The amount was arranged between the parties on the faith of a statement made *bona fide* by defendant, and accepted by plaintiff as accurate, that defendant had made the payment of interest from a certain date. After the judgment had been drawn up and the time for appealing had expired, plaintiff found that the interest allowed by the judgment had for two years already been allowed to the defendant in account.

In the present appeal the appellant contends that he failed to calculate the interest for 2 1/2 years, which amounts to about £302, and the respondent concedes that there is a miscalculation, that is to say, this is a case which proceeded on a mutual mistake. The respondent himself had already declared on oath in his original application to the Court that the amount due by him to the claimant on this debt in July, 1962, was £1,818 and not £1,613, which sum was stated by the creditor before the trial Court on the date of hearing (March 1963) ; and the respondent, who was present in Court, admitted the sum of £1,613 and kept silent as to the difference.

On the special facts of this case we are of the view that the Relief Court Judge had power to entertain the application under the provisions of the slip rule, Order 25, rule 6, subject to verification of the actual amount of interest due. We accordingly remit the case to the Judge to entertain the application for correction of the amount due to the appellant after reopening, if necessary, the matters connected with all or any of the debts of the respondent which were settled at the hearing of the 28th March, 1963.

We are of the view that, as all these proceedings are due to the error of the appellant, we should not allow him the costs of this appeal, and we accordingly order that each party should bear his own costs of appeal. As regards costs thrown away and future costs, if any, this matter is left in the discretion of the Relief Court Judge.

Appeal allowed. - Order of costs as above.

VASSILIADES, J. : I should like to add this : In an ordinary civil action, I would very much doubt whether the circumstances put before us, are sufficient to bring the case within the slip rule, *i.e.* rule 6 of Order 25. In a proceeding under the Agricultural Debtors' Relief Law, however, which is a proceeding of a special and exceptional nature, into which I need not now enter, I can bring myself to agree that in this case of mistake in the calculation of interest, admitted by both sides, upon which (mistake) the settlement of the debts was arrived at, I think that the Judge dealing with the case, had, in the circumstances, power to reopen the transaction in the way it is being reopened to-day as a result of this appeal.

WILSON, P. : Appeal allowed in the above terms ; each party to bear his own costs.

Appeal allowed.