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Case No: SC-2019-BTP-000531
CL-2009-000709
Previously 2009-Folio-No.83

IN THE HIGH COURT OF JUSTICE
BUSINESS AND PROPERTY COURT OF ENGLAND AND WALES
KING'S BENCH DIVISION
COMMERCIAL COURT

Royal Courts of Justice, Rolls Building
Fetter Lane, London, EC4A 1NL

Date: 28 June 2023

Before :

THE HONOURABLE MRS JUSTICE DIAS DBE

- -

Between :

DEUTSCHE BANK AG	**Claimant**
- and -	
SEBASTIAN HOLDINGS INC	**Defendant**
- and –	
ALEXANDER VIK	**Defendant for costs purposes only**

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- -

Mr Andrew McLeod (instructed by **Freshfields Bruckhaus Deringer**) for the **Claimant**
Mr Tom Morris (instructed by **Brecher LLP**) for **Mr Vik**
The **Defendant** did not appear and was not represented

Hearing date: 16 June 2023

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JUDGMENT

This judgment was handed down by the Judge remotely by circulation to the parties' representatives by email and release to The National Archives. The date and time for hand-down is deemed to be 09:00 on Wednesday 28th June 2023.

Mrs Justice Dias:

1. This application raises a short but interesting point of statutory construction on which there is surprisingly no direct authority. It concerns the recovery of arrears of interest under a non-party costs order and, specifically, the application of section 24(2) of the Limitation Act 1980 (the "**Act**") which provides that:

   "No arrears of interest in respect of any judgment debt shall be recovered after the expiration of six years from the date on which the interest became due."

2. The question is whether section 24(2) operates to limit recovery of interest where the period between the date of the costs order and the date of assessment is greater than six years. It arises for determination in the following circumstances. Following long-running and hard-fought litigation between the Claimant ("**DBAG**") and the Defendant (the details of which are irrelevant to the present issue), judgment in favour of DBAG was given by Mr Justice Cooke on 8 November 2013 for a sum in excess of US$243 million. By his order of that date, Cooke J also ordered the Defendant (amongst other things):

   i) to pay 85% of DBAG's costs on an indemnity basis, such costs to be subject to detailed assessment if not agreed;

   ii) to make an interim payment on account of costs in the sum of £34,517,115.30 by 22 November 2013.

3. No payment was made by the Defendant either then or since, and on 5 December 2013, DBAG applied for a non-party costs order against Mr Vik. The application came before Cooke J who, on 2 July 2014, ordered that Mr Vik should pay £36,204,891 (i.e., the amount of the interim payment plus interest thereon at the Judgments Act rate) by 8 July 2014. This payment was duly made by Mr Vik who nonetheless took steps to appeal the order.

4. These steps were unsuccessful and on 13 September 2016, DBAG applied to restore its original application for a non-party costs order in order to recover the balance of the costs awarded to it under the original judgment and to make Mr Vik a party to the detailed assessment proceedings.

5. On 10 October 2016, Cooke J ordered Mr Vik to pay *"DBAG's costs awarded against the [Defendant] pursuant to paragraphs 3 and 4 of the order of Cooke J dated 8 November 2013 on 8 November plus interest accrued thereon."* He also ordered that Mr Vik be made party to any detailed assessment. Mr Vik's attempts to set aside this order also failed.

6. All avenues of appeal having been finally exhausted unsuccessfully in 2018, DBGA served its bill of costs on 25 January 2019 in a sum of over £53 million. Detailed assessment commenced in January 2020 before Senior Costs Judge Gordon-Saker and lasted for nearly 100 days, culminating eventually in an assessed figure of £37,693,026.31 (including £1,165,803.20 in respect of the costs of the detailed

assessment itself). After taking account of the interim payment made in 2014 as well as various payments made by Mr Vik pursuant to Interim Costs Certificates issued by the Costs Judge along the way, this left a balance of £325,803.20 owing by Mr Vik. A Final Costs Certificate was issued on 11 May 2023 for this sum plus interest. The principal amount and a small amount in respect of interest accrued within the previous six years was paid by Mr Vik on 25 May 2023. However, he denies any obligation to pay earlier accrued interest.

The issue

7. The following matters were not in dispute between the parties before me:

   i) By section 17 of the Judgments Act 1838, every judgment debt carries interest from the date of the judgment until payment, unless the court orders otherwise pursuant to CPR Part 40.8(1). An order for payment of costs is a judgment debt pursuant to section 18 of the 1838 Act;

   ii) In *Hunt v RM Douglas (Roofing) Ltd,* [1990] 2 AC 398 the House of Lords held that an order for costs to be assessed is a judgment debt within the meaning of section 17 of the Judgments Act 1838 such that interest accrues from the date of the order;

   iii) Subject to the court's power under the CPR to disallow interest for all or part of the period after judgment, interest on costs at the Judgments Act rate therefore accrues from the date of the order, not from the later date on which the costs are quantified;

   iv) However, the order does not become payable until assessment has taken place. Accordingly, prior to quantification, the receiving party cannot take steps to enforce the order for either the principal amount of costs or interest because there is nothing to enforce until the amount has been quantified: *Chohan v Times Newspapers Ltd,* [2001] 1 WLR 1859. In those circumstances, it can only apply for interim costs certificates;

   v) In his judgment of 5 March 2020, the Costs Judge held that Mr Vik was liable for interest on costs at the Judgments Act rate from the date of Cooke J's original judgment against the Defendant, namely 8 November 2013, save that he disallowed the period from 20 July 2016 to 27 July 2017.

8. In these circumstances, the short and deceptively simple point at issue is whether interest on costs under the 8 November 2013 order first became *"due"* for the purposes of section 24(2) at the date of the order (and day by day thereafter) or only at the date of the Final Costs Certificate. Mr McLeod on behalf of DBAG submits that interest only first became due on the issue of the Final Costs Certificate and can therefore be recovered in full; Mr Morris on behalf of Mr Vik submits that interest first became due on the date of the original order and that section 24(2) precludes DBAG from recovering any interest accruing more than six years ago.

Principles of statutory interpretation

9. Unsurprisingly, there was no serious dispute as to the principles applicable to questions of statutory interpretation. They are set out by Lord Hodge in *R(O) v Secretary of State for the Home Department,* [2022] UKSC 3; [2023] AC 255 at [29]-[31] and can be summarised as follows:

    i) The court is endeavouring to ascertain the objective intention of Parliament as expressed in the language under consideration;

    ii) The primary source by which such intention is ascertained is always the words themselves when read in their particular context, which may include the section as a whole, a relevant group of sections, other provisions or even the statute as a whole;

    iii) The reason why primacy is afforded to the statutory context is because the public at large should ideally be able to understand parliamentary enactments from the words they see on the page without having to resort to secondary materials;

    iv) Nonetheless, it is permissible to refer to other sources such as Explanatory Notes, Law Commission reports, reports of Royal Commissions and advisory committees and Government White Papers, which may assist in identifying the purposes of the legislation and the mischief being addressed.

    v) Such sources may be referred to whether or not there is any ambiguity or uncertainty and may indeed even reveal an ambiguity or uncertainty: *Bennion, Bailey & Norbury on Statutory Interpretation,* 8th ed. (2020), §11.2.

    vi) However, external aids to interpretation play a secondary role and do not *"displace the meanings conveyed by the words of a statute that, after consideration of that context, are clear and unambiguous and which do not produce absurdity."*[1]

10. In the case of consolidating legislation, the starting point is likewise to start from the wording of the statute itself without reference back to earlier provisions or case law. Nevertheless, in cases of real doubt as to the meaning of a provision, there is a presumption that the consolidation was not intended to change the previous law, in which case recourse may be had to earlier legislation and case law: *Bennion, Bailey & Norbury (op.cit.)* §24.7.

Statutory context

11. I start with a consideration of the words in their statutory context.

12. Mr McLeod submitted that on its plain and ordinary meaning, a sum of money becomes "due" when the obligation to make payment falls to be performed. I am not so sure. There is a conceptual distinction between an amount being "due" and being "payable", and whereas an amount which is "payable" is always "due", the converse is not necessarily the case. An example would be time charter hire payable in arrears,

[1] The thrust of this sentence is clear although it might be said to do no more than state the obvious. Either the context reveals an ambiguity or uncertainty or it does not. If not, then plainly the clear and unambiguous meaning should be given effect.

where it is well-established that hire is earned and accrues due from day to day but by contractual agreement is only payable at a later date. Thus, the hire may be due but cannot be recovered by action until the due date for payment arrives. Even before then, however, it may be set off against a debt due from the shipowner. It is also counter-intuitive to accept that interest accrues day by day from the date of the order yet at the same time to argue that nothing is in fact "due" until some uncertain future date. As Mr Morris pointed out in argument, if the judgment debtor made payment before execution, it could not conceivably be denied that he had extinguished a liability for something which was otherwise due. In my judgment these considerations lend powerful support to the submission of Mr Morris that on the plain and ordinary meaning of the words a sum becomes "due" when the liability crystallises.

13. This first impression is strengthened by comparing the wording of sections 24(1) and 24(2). Section 24(1) refers to the bringing of an *"action"* on a judgment for which it prescribes a time limit of six years from the date on which the judgment becomes *"enforceable"*. This is to be contrasted with section 24(2) which refers to the *"recovery"* of arrears of interest in respect of any judgment debt which is not permitted after six years from the date on which the interest *"became due"*. The wording of the two sub-sections is therefore quite different and it can be inferred that if the draftsman had intended section 24(2) to limit recovery of arrears of interest to six years from the date on which the order for interest became enforceable, he could easily have said so.

14. Looking simply at the plain and ordinary meaning of the words used, therefore, it seems to me that section 24(2) reads most naturally as limiting what can be recovered by way of execution or enforcement, i.e., it operates as a statutory cap rather than as a true limitation period barring the bringing of suit.

15. So far as the other provisions of the Act are concerned, I was referred to several sections which refer variously to time limits for the bringing of an action running from the accrual of the cause of action,[2] or the time when the right to receive the money accrues,[3] or the time when the relevant sums become due.[4]

16. However, all of these provisions are directed at the bringing of suit rather than any process of execution. To my mind, therefore, they do not particularly assist in the interpretation of section 24(2) which, on its face, at least, appears to be addressing something different. Moreover, where the relevant trigger is an amount becoming "due", the nature of the sums contemplated by these provisions are by their very nature quantified from the outset. None of them obviously involves a sum which has yet to be determined.

17. It is also to be noted that (1) the Act replaced the previous Limitation Act 1939 which was itself a consolidating Act; and (2) both limbs of section 24 have a relatively

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[2] Section 3 - actions for conversion; section 5 – actions founded on simple contract; section 21(3) – actions regarding trust property.

[3] Section 20(1) – actions to recover money secured by a mortgage or charge; section 22(a) – actions in respect of a claim to the personal estate of a deceased person.

[4] Section 19 – actions for recovery of rent arrears; section 20(5) actions to recover arrears of interest payable in respect of sums secured by mortgage or charge; section 22(b) – actions to recover arrears of interest in respect of any legacy.

lengthy legislative pedigree. For this reason, both parties invited me to look at the legislative history of section 24 as elucidated and explained by various authorities, although the conclusions they each sought to draw from this exercise were very different.

Legislative history and case law

18. The following summary is drawn in large part from the decisions of the House of Lords in *Hunt v RM Douglas (Roofing) Ltd (supra)* and in *Lowsley v Forbes,* [1999] 1 AC 329.

19. Prior to 1833, there was no time limit for enforcing a judgment. However, there was a presumption that a judgment was satisfied after a year and a day and a judgment creditor who wished to execute after that time had to apply to revive the judgment by writ of *scire facias*. It could do this as of right for up to seven years but progressively more onerous formalities applied thereafter and after 20 years it had to show cause.

20. In 1833, the Real Property Limitation Act was passed, which provided relevantly as follows:

"40. …no action or suit or other proceeding shall be brought, to recover any sum of money secured by any mortgage, judgment, or lien, or otherwise charged upon or payable out of any land … but within 20 years next after a present right to receive the same shall have accrued…

42. … no arrears of rent or of interest in respect of any sum of money charged upon or payable out of any land or rent, … shall be recovered by any distress, action or suit but within six years next after the same respectively shall have become due…"

21. As explained in *Lowsley,* the reference in section 40 to "judgment" was attributable to the fact that a judgment at that date automatically bound half of the judgment debtor's freehold land. While there was apparently some doubt as to whether a writ of *scire facias* created a new right or simply continued the original judgment, it was clear that in the absence of any such writ, a judgment debt became time-barred for all purposes after 20 years, whether by the bringing of a fresh action on the judgment or by seeking to execute it.

22. Section 42 of the 1833 Act made no mention of any limitation period for the recovery of interest on judgment debts, doubtless for the very good reason that the concept of interest on judgment debts was only introduced five years later in the Judgments Act 1838. Thereafter, however, section 42 was construed as applying to interest on judgment debts as well: *Henry v Smith* (1842), 4 Ir Eq R 502.

23. The "year and a day" rule was abolished by section 128 of the Common Law Procedure Act 1852, which provided that a judgment creditor could execute a judgment at any time within six years without the need for a writ of *scire facias*. However, the 20-year absolute statutory bar prescribed by s. 40 of the 1833 Act remained and was held in *Watson v Birch* (1847), 15 Sim. 523 to apply equally to cases where the judgment creditor was seeking to execute on the debtor's personal estate.

24. In 1874, section 40 of the 1833 Act was re-enacted by section 8 of the Real Property Limitation Act but with a reduced time limit of 12 years.

25. In 1875, the Supreme Court of Judicature (1873) Amendment Act 1875 introduced the Rules of Court, including Rules 18 and 19 which provided (in essence) that a judgment creditor could execute a judgment at any time within 6 years as of right, and thereafter with the leave of the court. In *Jay v Johnstone*, [1893] 1 QB 25; [1893] 1 QB 189, the Divisional Court and the Court of Appeal rejected the argument that section 40 had therefore been impliedly repealed so far as concerned judgments, pointing out that if that were the case there would be no period of limitation at all with regard to personal judgments.

26. There matters largely rested until the Limitation Act 1939 was introduced to consolidate the previous legislation, albeit with some amendments. Section 2(4) of the 1939 Act re-enacted both section 8 of the 1874 Act and section 42 of the 1833 Act in a single section as follows:

"An action shall not be brought upon any judgment after the expiration of 12 years from the date on which the judgment became enforceable, and no arrears of interest in respect of any judgment debt shall be recovered after the expiration of six years from the date on which the interest became due."

Both the earlier statutes were repealed in their entirety.

27. In 1948, the Court of Appeal in *WT Lamb & Sons v Rider,* [1948] 2 KB 331 had to consider whether there was an inconsistency between the statutory bar on a judgment debt after 12 years and the discretionary bar on execution after 6 years. In giving the judgment of the court, Scott LJ held that section 40 was concerned *only* with the right to bring a fresh action on the judgment and not with any process of execution which was a separate and distinct matter. This decision was subsequently followed in *Berliner Industriebank Ags v Jost,* [1971] 1 QB 278.

28. Despite doubts as to the reasoning of Scott LJ, the House of Lords in *Lowsley* declined in 1999 to depart from the decision. By then, the 12-year period in section 2(4) of the 1939 had been reduced to 6 years by the Limitation Amendment Act 1980 and the House of Lords looked at the Final Report of the Law Reform Committee on Limitation of Actions (1977) (Cmnd 6923) to ascertain the reason for the reduction. This Report recorded the view of the Committee that:

    i) The simplest way originally for a judgment creditor to effect recovery more than a year and a day after the judgment was by action on the judgment. Since such a judgment was chargeable *per se* on the proceeds of sale of real property, it was logical to align the period for such an action with actions relating to land generally. However, actions on a judgment were now so rare that there was little justification for retaining a special rule for them;

    ii) Questions of limitation should in future be kept separate from rules relating to execution.

29. The House of Lords accordingly concluded that this was the reason for the reduction of the twelve year time limit in section 2(4) to six years and that the amendment was

designed to effect a statutory compromise in line with the Committee's proposal whereby all forms of execution were removed from the sphere of limitation and made subject to a discretionary bar of six years.

30. Thus, the re-enacted section 24(1) in the 1980 Act (which repealed and replaced the 1939 Act) was to be interpreted as applying only to a fresh action on a judgment[5] and did not cover proceedings by way of execution. However, their Lordships held that section 24(2) was *not* similarly limited to actions on judgments, but applied to execution of judgments generally. Accordingly, execution for arrears of interest was barred in respect of all judgments after six years.

31. At this juncture, it is necessary to refer to the decision in *Hunt* in slightly more detail. Prior to 1838, interest on costs could not be recovered at all. This changed with the enactment of sections 17 and 18 of the Judgments Act which provided (i) for a judgment debt to carry interest at a prescribed rate from the date of *"entering up"* the judgment and (ii) that any sum of money ordered to be paid was a "judgment" for this purpose. However, at the date that *Hunt* was decided, the court still had no power to order pre-judgment interest on costs, nor could it order that Judgment Act interest should run from a date later than the date of the judgment.

32. Against this background against which the House of Lords in *Hunt* had to decide whether, in a case where costs were ordered to be assessed, accrual of interest should be postponed to the date of quantification (the *allocator* rule) or should run from the date of the order (the *incipitur* rule) even though there was no sum for which execution could be levied and the paying party could know what it was supposed to pay until quantification. As it recognised, there were competing considerations to be balanced. If the *allocator* rule applied, there would be an incentive for the paying party to delay proceedings to the prejudice of the receiving party. On the other hand if the *incipitur* rule applied, the receiving party might have its own incentive to delay if commercial rates of interest were lower than the Judgments Act rate.

33. Recognising that it was not possible to achieve a just result in every case, their Lordships held that the balance tipped in favour of the *incipitur* rule on the basis that:

    i) The receiving party was unable to recover interest on costs paid pre-judgment and would therefore be doubly penalised if it was also deprived of post-judgment interest prior to quantification;

    ii) Adoption of the *incipitur* rule would be a stimulus to the paying party to agree costs and/or make sensible payments on account when it would otherwise have every incentive to delay matters. In this way, it could also protect itself to some extent against delays by the receiving party.

34. It should be noted that at 416C, Lord Ackner (who gave the leading speech) expressly rejected the argument that because there was no sum for which execution could be levied until taxation had been completed, an order for payment of costs to be taxed could therefore not be a judgment debt. He considered that this was a submission which was precluded by authority.

[5] In the case of an order for costs to be assessed, the combined effect of *Lowsley* and *Chohan* is that an action on the order under section 24(1) becomes time-barred six years after the order is eventually quantified which is when it first becomes enforceable.

35. The rule established in *Hunt* that an order for costs to be assessed is a judgment debt is a clear anomaly and this was recognised by Lord Ackner himself in *Thomas v Bunn,* [1991] 1 AC 362 where the House of Lords held that a judgment for damages to be assessed is treated differently and does *not* constitute a judgment debt until assessment has taken place. Moreover, the court now has power under rules of court to award pre-judgment interest on costs and to delay or limit the period for which Judgment Act interest should run, and can therefore tailor its order to the justice of the individual case in a much more nuanced way. In those circumstances, the justification for retaining the *incipitur* rule in the case of an order for costs to be assessed is decidedly questionable but Lord Ackner nonetheless considered that the balance of justice favoured its retention. Thus, unless and until it is changed either by the Supreme Court or Parliament, it represents the law which I must apply: see *Involnert Management Inc. v Aprilgrange Ltd,* [2015] 5 Costs LR 813 at [6]-[9].

Discussion and analysis

36. I have great difficulty with Mr McLeod's argument that on the plain and ordinary meaning of the words used, interest only becomes *"due"* when it becomes payable. For the reasons already given in paragraphs 12.-14. above, it seems to me that this submission confuses two analytically separate concepts, namely the incurring of a liability and the obligation to pay. The distinction between the two is underlined by the different wording in section 24(1) which expressly refers to enforceability.

37. Moreover, as the legislative history of the section shows, section 24(1) is concerned with the bringing of suit and derives from section 40 of the 1833 Act. Although this initially applied to proceedings for enforcement as well as to actions on the judgment, it has since *Lamb v Rider* in 1948 been confined to actions on the judgment. By contrast, section 24(2) is concerned with execution – which Scott LJ in *Lamb v Rider* regarded as a wholly distinct form of process. This distinction between the two sub-sections was confirmed by the House of Lords in *Lowsley*, endorsing the Law Reform Committee's view that questions of limitation and execution should be kept separate.

38. Where costs are summarily assessed and quantified at the date of the order, there is of course no problem. They become both due and payable at that point, as (on a daily basis) does any accruing interest, and the receiving party can take immediate steps to enforce for a quantified sum. The problem only arises where there is a delay for assessment.

39. It has to be hoped that there will be few cases indeed where a detailed assessment takes more than six years, let alone nearly ten years from the date of the order. While delay is obviously not unknown, it is unlikely that the draftsman of the 1980 Act had the exceptional circumstances of this litigation in contemplation and I do not consider that they should sway my judgment one way or the other on the point of principle at stake, particularly since neither side is entirely blameless in this respect.

40. However, given that section 24(2) is concerned with proceedings for enforcement for which there is no time limit as such, it does not seem to me that there is anything absurd or unjust in Parliament having imposed a cut-off point for the recovery of interest. On the contrary, but for section 24(2), a judgment creditor could execute a judgment whenever it saw fit and recover interest in full going back many years, if not decades. It seems to me that there is therefore a very powerful policy argument in

favour of such a cut-off since it encourages a judgment creditor to enforce its judgment with due expedition and discourages the pursuit of stale claims. Accordingly, in my judgment, the intention of Parliament was, as Mr Morris submitted, to impose a statutory cap on the amount of interest that could be recovered, whenever a judgment came to be enforced.

41. This view is further supported – at least inferentially – by the fact that the House of Lords in *Lowsley* was seemingly unperturbed that, even in circumstances where enforcement had been delayed beyond six years by fraudulent concealment on the part of the judgment debtor, the blameless judgment creditor could still only recover interest going back six years.[6]

42. There is a further point. Section 24(2) only bites at the point of enforcement. If there had been no delay for assessment, but the receiving party had simply delayed in taking steps to enforce, there could be no question but that recoverable interest would be capped at six years. Why, one might ask rhetorically, should it be in any better position simply because costs were ordered to be assessed? By the time it comes to enforce, the amount of accrued interest is known and it is in precisely the same position as a judgment creditor who has simply delayed.

43. It is true that the receiving party may not be responsible for any delay in assessment beyond six years. But the court has sufficient tools at its disposal to do justice in that situation by issuing interim costs certificates. Conversely, a receiving party who delays unnecessarily may find that all or part of the Judgment Act interest which would otherwise run from the date of the order is disallowed under CPR Part 40.8(1). One way or another, therefore, the court is well able to tailor its orders to the justice of the case.

44. Mr McLeod nonetheless referred me to two authorities, which he said concluded the matter in his favour. The first was the decision of the Court of Appeal in *Barclays Bank plc v Walters* (unrep.) 13 October 1988. This concerned a five-year loan secured on the defendant's cottage. After some years, the defendant defaulted on the loan repayments and the bank eventually took steps to repossess and seek payment, having meanwhile continued to add interest in accordance with the terms of the loan. The judge at first instance allowed the bank to recover interest in full, including interest which had accrued more than six years previously. On appeal, it was argued that section 20(5) of the 1980 Act limited recovery of interest to the previous six years only. However, the Court of Appeal dismissed the appeal, holding that interest was not "due" within the section until it fell due for payment, which in this case upon the expiration of the five-year period.

45. It cannot be denied that this is an authority which on its face squarely supports Mr McLeod's argument. Nonetheless, it is an unreported decision which appears to have been delivered *ex tempore,* and in which none of the authorities or legislative history debated at some length before me seems even to have been mentioned. It was also a

[6] The judgment creditor in *Lowsley* argued for an extension of time under section 32(1) on grounds of fraudulent concealment but this was rejected on the grounds that section 32(1) only applied to actions for which a period of limitation was prescribed. By contrast, recovery of interest by way of execution was not a right of action and so did not fall within the ambit of the section.

decision on a different section of the Act and, with all due diffidence, I do not regard it as binding me to find in Mr McLeod's favour in this case.

46. The second authority is the old case of *Toft v Stephenson* (1851), 1 De G M & G 28 [42 ER 461]; (1854) De G M & G 735 [43 ER 1055]. This concerned a purchase of land where the purchaser was let into possession but the purchase price was never paid and title was never conveyed. Both parties subsequently died and the trustees of the vendor's estate claimed a lien over the land for the purchase price. The trustees of the purchaser's estate argued (amongst other things) that recovery of interest was limited to six years under section 42 of the 1833 Act. The Court of Appeal held that the right to receive the purchase price could not accrue until title had been perfected (which on the evidence, it had not) and that interest could therefore not be due until the purchase price was due even if it then fell to be backdated to the date of the contract. Accordingly, the case was not caught by section 42. In my view, this was a very different factual scenario which does not detract from my analysis above.

47. For all these reasons, therefore, I conclude that where costs are ordered to be assessed, interest becomes *"due"* within the meaning of section 24(2) of the Limitation Act 1980 on the date of the original order and accrues from day to day thereafter. I reject the submission that it only becomes due when quantification has taken place, albeit that it only becomes payable at that point.