

No. 14542 $\frac{1}{2}$

Supreme Court of Illinois

Waterman

vs.

Jones

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STATE OF ILLINOIS,
SUPREME COURT,
Third Grand Division

No. 201

Waterman

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Jones

14542

1803

Amundson

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Supreme Court of the State of Illinois,
THIRD GRAND DIVISION.

APRIL TERM, A. D. 1863.

DANIEL B. WATERMAN et al }
vs
JOHN JONES }

PETITION FOR REHEARING.

Your petitioner, the defendant in error, confidently asks for a rehearing in this cause, decided at the last term. He respectfully hopes that upon further reflection your Honors will be satisfied that the decision was one of those accidentally erroneous ones, which will sometimes happen with the best of Jurists, when compelled to decide without sufficient time allowed for reflection, and that, because of a distinction hereafter mentioned, not having occurred to the minds of your Honors, under a great pressure of business. ~~The~~ *The* decision, if allowed to stand, will be the only one of the kind, and in direct conflict with all others on the subject.

The principle claimed to be the law in the opinion of his Honor Judge Breese is, that a note of hand payable on demand, cannot properly be sued until the day next after its date. The note bore date, Nov. 20th, 1860, on which day Judgment was was confessed.

The language of the opinion is, "the note was not due until the 21st day of November, until which day the attorney had no authority to confess the judgment. The confession of judgment was premature and must be revoked." We claim that the law prior to that decision of your Honors, was clearly and without the least conflict of authority, settled to be, that a note payable on demand, with or without interest mentioned in it, was due instantly upon its delivery. That a suit could be properly commenced upon it on the day of its date without any prior demand, and that because it could be thus properly sued on the day of its date, immediately after its delivery, the Statute on Limitations commenced to run from the day of its date, including that as one of the days in the computation of the necessary time to create the bar. By way of illustration, in Massachusetts, where the bar is six years, an action on a note dated Nov. 1st, 1811, commenced Nov. 1st, 1817, ~~it~~ is one day too late.

Presbery vs. Williams, 15th Mass.
193.

Although upon careful examination it appears to us that the accompanying printed argument of the defendant in error, furnished by the Attorneys who tried the cause at the last term, is clear, conclusive, and unanswerable. ^{We} We can very readily see how, under a pressure of business, the best legal mind might accidentally fail to perceive the distinction between a note payable on demand, and one payable at a future time. In this latter case, the maker has the whole day of maturity within which to pay it, and an action on that day, is premature; and by the way, in this case ~~it has~~, if the note was, as inferentially stated in the opinion, due on the 21st. ^{We} We think no action could be maintained which was commenced before the 22d, because the maker has the whole day of maturity within which to pay. Undoubtedly a note dated Nov. 20th, payable one day from date, would mature on the 21st, ten days from date, on the 30th, and so on. And an action on the day of maturity would be premature. ~~It~~ is said in the case

above cited, as well as in that of Henry vs. Jones, 8th Mass. 435, that unless this were so, a note payable one day after date would be the same as a note payable on demand. We do not deny the authority of the three cases cited in the opinion of Judge Breese. We claim that they are inapplicable. They have no possible bearing on the question whether there was a cause of action on the note on the 20th, or on the 21st, and they shed no light on the question decided by the Court. Whether the parties intended by the words, "at any time from and after the date thereof," to postpone the time of confessing judgment, till one day after that on which a suit could have been properly brought we will examine hereafter. This question was not decided.

A note payable on demand does not differ in its legal effect from a due-bill, because the law is settled that a suit on it is the only demand necessary. Storey on ^{2d} ~~Part~~ notes, Section 29; 11 Ill, 471, and the law in relation to the time of maturity of the note in this case is as clear as though the instrument was as follows:

"AURORA, Nov. 20th, 1860.

Due John Jones or order, two thousand and twenty-seven 25-100 dollars."

We contend that upon the note as well as upon such a due-bill, an action can be can be properly commenced at any time after the delivery on the day of the date.

~~As~~ ^{not} the practical effect of not setting aside of reversal will be ~~this~~, our client will lose his whole debt. ^{but} We do earnestly ask your Honors to carefully examine the authorities hereafter cited, and that a rehearing may be awarded ~~it~~ if upon re-consideration it shall be ascertained that the views of your petitioner are sound and that this is really not a question about which there is any conflict of authority, but that the decision is clearly and manifestly against all law, and every authority. The only one of the kind in the history of the jurisprudence of the world. The following authorities are cited to the effect that a note of hand payable on demand, ^{such} is immediately due on delivery, and that it may be properly said instantly, without prior demand, whether payable with

interest or not. This we claim it as well settled in law, as that in mathematics two and two make four.

Little vs. Bennett, 9 Pick. 488
Norton vs. Ellan, 2 ^{Mass} Mass., and
Wels, 461.
Presbery vs. Williams, 15 Mass.
193.
Easton vs. McAllister, 1 Mis. 662,
Larrason vs. Lambert, 7 Halsted.
247.
Newman vs. Kitte, 13 Pick. 418.
Wenman vs. Mohawk Ins. Co., 13
Wend. 267.
Hill vs. Henry, 17 Ohio, 9.
Cadman vs. Rogers, 10 Pick, 112.

The doctrine of these cases is that stated in all the Treatises on bills and notes, as settled law. There is no conflict, such is the law. We now propose to consider briefly whether the proper construction of the words "at any time from and after the date thereof," as used in the power of attorney were intended by the parties to the transaction, to postpone until the 21st day of November, the exercise of the authority of the attorney under the power. From an examination of the following authorities, it will be seen that whether the words "from and after," as applied to a date or event, are construed as inclusive or exclusive of the day of the date, or event, depends upon the context, subject matter, intention of the parties and reason of the thing. Although in some of the earlier English cases distinctions were attempted to be drawn between from and after date, and from and after the day of a date, and between from and after a day, and from and after an act done, &c. Time and reflection have shown that it was "considering too curiously to consider thus," and the intention of the parties as gathered from the context, nature of the subject, and reason of thing, has caused these words "from and after," to be construed sometimes inclusive and sometimes exclusive of the day of a date, or event. Lord Mansfield says in the case of Pugh et al vs. the Duke of Leeds, cited hereafter, that in vulgar use or in grammatical strictness, and in the nicest propriety of speech, the sense of the word "from" must always depend upon the context and sub-

ject matter whether it shall be construed inclusive or exclusive. In Garland 15 Vesey 248, it is said to depend "on the reason of the thing." See also,

Sims vs. Hampton, 1 Serge and Rawle, 411.

Cartle vs. Bennett

Term
~~Cartle vs. Bennett~~, 3d Tenn. 623.
Glapington vs. Rawlins, 3d East 407.

Parsons on Contracts, Vol. 2, 175, 3d Ed.

As this question was not mentioned in the opinion, it seems hardly necessary to press that matter farther. It would under the modern rule which makes the intention of the parties the main thing be a strange idea that the parties really intended to defer the time of entering up judgment to a day subsequent to that upon which an action could have been commenced on the note.

Considered by the light of surrounding circumstances, the word "from," is clearly synonymous with the word "on." If Judge Breese prior to this term of Court should have said to the writer that he expected to be in Ottawa from and after the first day of the next term of the Supreme Court, the writer would have expected to see him "on" the first day.

But conceding the first position that there may be a division of the day of the 20th of November, and that an action can be commenced on that day and after the date, then the literal and only construction proper to be given to the language, is that the judgment may be confessed on the day of the date and after the act or event of the dating. Such must be the construction of the word "from," ~~or the word from~~ is mere surplusage, and the word "after," was the only preposition used, under the old English distinctions to which allusion has heretofore been made. *The*
~~The~~ first day should be included. The date is an act done, the words "day of the date," are not used. The words "from and after the date," must, by all known rules of construction, mean after the act or event of dating the note, and on or after the day of the date of the note.

It will be seen by the above case of Norton vs. Ell in 2 M. and W. 461, as well as by the treatises generally, that the provision for interest does not postpone the time of bringing suit on the note. The inquiry, "how long does it delay the accruing of cause of the action?" presents to the mind clearly that the answer must be "not at all," It is optional with the payee whether he will defer the time of suing. If time is given, the fixed rate of interest is to be paid.

We find no other difficulties in our way. We hope if there are others not suggested by the counsel on the other side, that the Court will call our attention to them, before deciding to refuse the motion for a rehearing, for other reasons not discovered by us, and not alluded to in the opinion heretofore drawn up.

LELAND & BLANCHARD,

Att'ys for Defendants in Error.

Argument at last Term

Supreme Court of the State of Illinois, THIRD GRAND DIVISION.

APRIL TERM, A. D. 1882.

JOHN JONES, Defendant in Error, against DANIEL B. WATERMAN and MYRON V. HALL, Plaintiffs in Error.	}	Error from the Court of Common Pleas of the City of Aurora.
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Statement of Case, and Brief of Points and Authorities, and
Argument of Defendant in Error:

STATEMENT OF THE CASE.

This was a judgment entered in the Court of Common Pleas of the City of Aurora, in vacation, before the Clerk, by confession, on filing of the usual papers, to wit: A declaration on plaintiffs' cause of action, the warrant of attorney with the usual proof of its execution, and a plea of confession or cognovit. The plaintiffs in error bring their writ of error to this court to set aside and vacate said judgment.

POINTS AND BRIEF.

The plaintiffs in error insist that the judgment was prematurely entered, as the warrant of attorney provides that judgment may be confessed on the note "at any time from and after the date" of warrant of attorney and note; and that therefore judgment could not have been confessed and entered properly until after the expiration of the day on which the note and power of attorney were executed:

First. The first point made by the defendant in error on this position of the plaintiffs in error is: That there is no general rule in computing time from an act or an event, whether the day is to be *inclusive* or *exclusive*, but it depends on the reason of the thing, according to circumstances, and the intention of the parties, so far as that can be ascertained, from the contract.

A. In the case of *Lester vs. Garland*, 15 Vesey, p. 248, it is held that "there is no general rule in computing time from an act or event; that the day is to be inclusive or exclusive, it de-

pending on the reason of the thing according to the circumstances."

To the same effect is the case of *Castle vs. Burditt*, 3 Term Reports, p. 623; *Glassington vs. Rawlins*, 3 East, p. 407.

A. In the case of *Sims vs. Hampton*, 1 Serg. and Rawle, Penn. Rep., p. 411, the Court say: "The adjudged cases are not reconciled, but upon a careful investigation of them it may be perceived that the day on which the act is done has been included or excluded, as the nature of the case indicated to the Court the propriety of a vigorous or a liberal construction.

A. In the case of *Pugh et Wex. vs. Duke of Leeds*, Cowp., p. 714, (or 2 Cowp. in Eng. Com. Law Rep., p. 714,) Lord Mansfield goes over the whole ground and all the cases, and then holds that the word "from" may mean either inclusive or exclusive, according to the context and subject matter, and in the course of his opinion he says:

"In grammatical strictness, and in the nicest propriety of speech that the English language admits of, the sense of the word "from" must always depend upon the context and subject matter, whether it shall be construed inclusive or exclusive of the terminus a quo."

And again: "To conclude, the ground of the opinion and judgment which I now deliver is, that 'from' may in vulgar use, and even in the strict propriety of language, mean either inclusive or exclusive."

A. In *Parsons on Contracts*, vol. 2, p. 175-176, [3d edition] the law is stated thus: "The later cases however seem to establish the principle that a computation of this kind shall always conform to the intention of the parties, so far as that can be ascertained from the contract, aided by admissible evidence."

Second. The note attached to the power of attorney in this case is payable on demand, and a note payable on demand is payable immediately. *Bayley on Bills*, [Boston edition, 1826,] p. 141; and imports that the debt is due and payable immediately; and an action is a sufficient demand. *Byles on Bills*, [3d Am. Edition,] p. 390; and as to bringing of suit being sufficient demand: *vide New Hope Delaware Bridge Co. vs. Perry et al.*, 11 Ill., p. 471.

A. Therefore, on a bill or note payable on demand, the statute of limitations runs from the date of the note or instrument. *Byles on Bills* [3d Am. Edition] p. 141; *Easton vs. McAllister*, 1 Missouri, 662; *Larrason vs. Lambert*, 7 Halsted, 247; *Newman vs. Kettle*, 13 Pick., 418; *Wenman vs. Mohawk Ins. Co.*, 13 Wend., 267; *Wilks vs. Robinson*, 3 Richardson, 182; *Hill vs. Henry*, 17 Ohio, 9.

B. And here "from the date" means as soon as the note is made; for a note payable on demand is due always, and the statute begins to run as soon as the note is made. Parsons on Contracts [3d Edition] p. 372; Little vs. Blunt, 9 Pick., p. 488; 13 Wend., p. 267; Hill vs. Henry, 17 Ohio, p. 9; Norton vs. Ellam, 2 Messrs. and Wels, 461; Codman vs. Rogers, 10 Pick., 112; Ruff vs. Bull, 7 Harr. & John., p. 14; Peaslee vs. Breed, 10 N. Hamp., p. 489; 15 Mass, p. 193.

In Little vs. Blunt, 9 Pick., 488, it is said: "In the computation of the period of limitation, the day on which the cause of action accrued is always *included*, and the reason given is, because an action might have been commenced on that day."

The case, Presbrey vs. Williams, 15th Mass., p. 193, was as follows:

The action was on a promissory note which the defendant had admitted to be due and unpaid, on the first day of Nov., 1811.—The action was commenced on the first day of Nov., 1817, and the Court held that the statute of limitations had run and the plaintiff was a day too late.

And Jackson, Judge, in giving the opinion of the Court says: "In the construction of a promissory note payable in a certain number of days, the day of the date is excluded, because otherwise a note payable in *one day* would be the same as a note payable *on demand*;" and the same reason is given in the case of Henry vs. Jones, 8. Mass., p. 453.

Third. Now, the Note and warrant of attorney having been executed at the same time and in reference to the same subject matter, must be construed together, and considered as forming but one transaction. Sherman vs. Badely, 11, Ill., 622.

A. It is a rule that the whole contract should be considered, in determining the meaning of any, or all its parts. Parsons on Contracts, (3d Ed.) p. 13.

And the intent ought to be picked out of every part and *not* out of one word only. Idem. p. 13, note 2, and cases there cited.

Barton vs. Fitzgerold, 15 East., p. 541. The contract may be contained in several instruments, which if made at the same time between the same parties, and in relation to the same subject matter, constitute but one contract, and the recitals in each may be explained, or corrected by a reference to any other, in the same way as if they were only several parts of one instrument. Parsons on contracts [3d Ed.] p. 15. Sawyer vs. Hammett, 15 Maine, p. 40.

Fourth. Construing then the note and power of attorney together as *one* instrument, and explaining the one by the other, it

appears that the plaintiffs in error made a note and incurred a debt, which was due immediately, and on which the defendant in error [the payee in note] might have immediately commenced an action, and on which the statute of limitations *immediately* began to run ; and the words "from and after the date hereof" in power of attorney, must be construed with reference to that fact ; and thus construing those words in the light of "the context and subject matter" of the whole instrument,—according to the authorities above quoted—the words "from and after" should and must be considered *inclusive* of the day of date of the note and power of attorney.

And it was the evident intention of the parties, gathered from the whole instrument, that a judgment might be entered up on the note immediately, from the fact that the note was made payable on demand—and such was the intention of the makers of note, although it does not appear—if not, the note would have been made payable one day from date or longer.

A. Justice and equity require such a construction and interpretation ; for there is no reason or justice in requiring the payee of the note to wait beyond the day of making the instrument before he could enter judgment on it by confession, when he has a right to commence an action on the debt that day, and the statute of limitations begin to run against him that day.

If the day of the date is to be construed as inclusive, when it is construed against him and his right to bring an action within the period of limitation, then it ought in fairness to be construed inclusive in his favor as to his right to take judgment on that day.

Otherwise his warrant of attorney is of little avail to him ; for if the makers of the note were in insolvent circumstances, the payee or his assignees would, in order to avail themselves of the right which the law gives them to bring their action immediately, have to give up their warrant of attorney entirely and commence action without it ; or would have to wait on a debt already due, and on which the statute runs, a length of time before they could take judgment according to the tenor and effect of the very contract of which the note already due is a part, and which was intended to give the payee of said note a summary remedy which he would not have without it. Such a construction would be forced, unnatural and unreasonable.

B. The mere fact that the note is payable with interest does not show that the parties absolutely intended that judgment should not be entered up on the note immediately, and intended it for a continuing security—as plaintiffs in error insist.

Such an argument proves too much ; for it would be just as

good an argument against taking judgment the next day after the date of the note as against taking judgment the same day that note is dated, and plaintiffs in error admit by their argument that judgment entered the second day would have been regular and good.

The provision for interest was put in evidently for the benefit of the payee, so that if he did not take judgment at once (which was optional with him) he should have his interest on the debt.

But the statute of limitations begins to run on such a note as soon as it is made, although the note be payable with interest.—Norton vs. Ellam, 2 M. & W., p. 461.

Fifth. This Court should not set aside this judgment, if the same was entered up on the regular and proper papers filed with the Clerk, unless the law and justice and the necessary intention of the parties require it to be done.

Sixth. Costs are an incident of the judgment, and follow the judgment as a matter of course. 2 Scam., p. 49; 20 Ill., p. 319.

The power of attorney in this case authorizes a judgment to be entered for costs, *vide* record, and it is not absolutely and indispensably necessary that the cognovit confess a judgment for costs, and the makers of the power of attorney cannot complain if judgment for costs be entered against them as long as they have authorized it in the warrant of attorney. But if the costs were irregularly and improperly taxed on the judgment, that is no ground for setting aside the judgment, but only a ground for ordering a re-taxation of costs, or otherwise; or the judgment for costs may be reversed and the main judgment stand affirmed.

Seventh. The plaintiffs in error in the warrant of attorney expressly waive and release all errors which may arise in entering up judgment by virtue thereof. *Vide* record page

Eighth. The warrant of attorney authorizes execution to be issued immediately, and it is not necessary that cognovit should authorize it, and issuing of execution is no part of the judgment.

For the above reasons the defendant in error thinks the said judgment of the Aurora Court of Common Pleas entered on said note and power of attorney by confession, should not be reversed but be affirmed.

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Daniel B Ma
Arman et al
vs
John Jones

Petition for
Rehearing

Filed Apr 23. 1863.

L. L. Latta
Att

Myron S. Hall
Daniel B. Halterman

vs

John Jones

In the Supreme Court of the
State of Illinois 3rd Grand
Division Error to Court
of Common Pleas City of Alton
Charles J. Metzner, Attorney for
Plaintiff in Error

Take notice that
on the 21st day of April A.D. 1863
we shall apply to the Supreme Court
of the State of Illinois for a rehearing
in the above entitled case. We
shall make that application to
said Court at their Court room
in the City of Ottawa Illinois as
soon as said Court shall be organized
for the April Term A.D. 1863 and cannot
can be heard after the organization of
such Court on said 21st day of April
1863 for the April Term of said Court

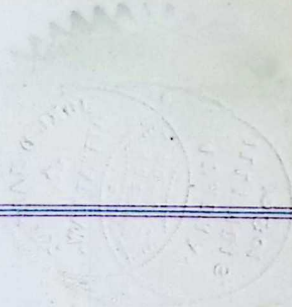
Island & Blanchard &
Attys for Deft in Error
John Jones

State of Illinois }
Kane County } Frank Annis being
first duly sworn on Oath Swears
that he found on Charles J. McGinn
Esq. counsel of said Plaintiff in
and a notice of which the
attached is a copy that said
notice was served by handing
the same to said McGinn on
the 16th day of April A.D. 1863
at Groves Kane County Illinois

Proven & Subscribed }
before me this } Frank Annis
21 day of April }
A.D. 1863 }
J. H. Kamey
Notary Public



201
J. B. Williams
vs
John Jones
Notas



Filed Apr 23. 1863
L. L. Leland
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