

No. 13602

Supreme Court of Illinois

¹
Etnyre

vs.

DANIEL
Mc

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192
STATE OF ILLINOIS,

SUPREME COURT,

Third Grand Division.

No. 237.

Etnyre

vs

McDonald

1862

13602
Depue

Supreme Court of Illinois—3rd Grand Division.

APRIL TERM, 1862.

JOHN ETNYRE and
ROBERT B. LIGHT, Appellants,
vs.
JOHN McDANIEL, Appellee.

3. Declaration filed in Ogle Circuit Court upon the following instrument of writing :
6. §159. 84.

On or before the first day of Aug., 1856, we, or either of us, promise to pay Edwin R. Stoddard, or order, the sum of one hundred and fifty dollars and eighty-four cents for value received, with use at ten per cent. from date.

JOHN ETNYRE,
R. B. LIGHT.

Oregon, April 28, 1856.

Endorsed, E. R. Stoddard.

7. Received on within thirty-two and 12-100 dollars.

E. R. STODDARD.

January 30, 1858.

8. Trial by the Court. Judgment for Plaintiff, \$214 85. Motion for new trial overruled; exception.

9. The note and endorsements was all the evidence introduced on the trial.

ERRORS ASSIGNED.—In finding for Plaintiff below.

In overruling defendant's motion for a new trial.

In rendering judgment for plaintiff below.

In rendering judgment for too large an amount for plaintiff below.

E. F. DUTCHER, and

LELAND & BLANCHARD, for Appellants.

POINTS AND AUTHORITIES.

The rate of interest in the State of Illinois, is six per cent., in all cases unless by special contract, a party agrees to pay more than that rate.

In this case, the note is payable the first day of August, 1856, dated April 28, 1856, with use at ten per cent. The contract for a greater rate of interest than six per cent., ceased to exist, on the note becoming due, and from that time to the rendition of the judgment, the plaintiff is only entitled to six per cent. interest.—Brewster vs. Wakefield, 22d ; Howard's U. S. Reports, page 118.

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Supreme Court,

THIRD GRAND DIVISION.

JOHN ETNYRE and

ROBERT B. LIGHT, Appellants,

vs.

JOHN McDANIEL, Appellee.

Filed May 12, 1862
J. Leland
WR

SUPREME COURT OF ILLINOS,

THIRD GRAND DIVISION,

APRIL TERM THEREOF, A. D. 1862

JOHN ETNIRE
vs.
JOHN McDANIEL. } *Appeal from Ogle.*

BRIEF FOR APPELLEE.

The only point made by appellant is, that 10 per cent. interest was allowed as damages for non payment of the note, from the date to the time of payment, whereas only the rate of 6 per cent. should be allowed after the note became due. And authorities are cited in support of that proposition.

The fact seems to be that there are authorities upon both sides, and that being the case, the decisions of this Court should govern. And this Court has decided that a note continues to bear the rate of interest reserved by it until paid.

Phinney v. Robinson, 16 Ill. 108.

See also

Hopkins v. Crittenden, 10 Texas, 189.
Austin v. Inness, 23 Vt. 286.
O'Neal v. Bookman, 9 Rich. Law (S. C.) 80.
Payne v. Clark, 23 Miss. 259.
Kohler v. Smith, 2 Cal. 597.

GLOVER, COOK & CAMPBELL,
Atty's for Appellees.

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Estrie

vs

McLoarniel

Appellee Brief

Filed May 9, 1862
J. L. Leland
clerk

John Elyse

vs

John W Daniel

This is an action upon a promissory note
of which the following is a copy

\$159.84 On or before the first day of August
1856 we or either of us promise to pay
Edwin R Stoddard or order the sum of One
hundred & fifty ~~dollars~~ nine dollars & 84
cents for value received with use at
ten per cent from date
Oregon April 28-1856 John Elyse
R. B. Light

In assessing damages upon the note
the court allowed interest at the rate of
ten per cent from the date of the note
until judgment. whereas by law. Six per
cent only should have been compu-
ted from the maturity of the note
The following authorities are in point

Brewster vs Wakefield 22 Howard 118
Macomber vs Durham 8 Wendell 553
U. S. Bank vs Chapin 9 Wendell 472
Ludwik vs Hutzinger 5 Watson & Serj 51
1 vol McLeod 67

Henry vs Strimpson Minn (Ala) 209
14 Ala 233
1 Ala 9

The case of Phinney vs Baldwin 16 Ell 108 has been cited as an adjudication of this question. We think not: in that case the question of interest was settled in accordance with the laws of California, where the note was made. And the Court say "It is a promise to pay \$200 within thirty days and interest thereon from date at the rate of five per cent per month.

The note was payable in one month. Yet the agreement is to pay at the rate of five per cent per month. The expression per month would not have been used, if it had not been the intention of the parties that that rate of interest should be paid until the payment of the principal - the parties by their contract have said that five per cent per month should be the rate of interest until paid.

The Court will find the reason of the rules

as we affirm it is laid down in the
authorities cited

Selma Blanchard
for appellants

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John Clynge

vs

John McDaniel

Suggestions by

Appellant

Filed May 17, 1862

J. Leland

1
State of Illinois
2^d Judicial Circuit } At a Circuit Court begun and holden
County of Ogle } in and for the County of Ogle and
State of Illinois at the Court house
in Oregon in said County and State on the Second
Monday of June AD 1860 to wit on Tuesday the Twelfth
day of said June then and there being present

Honorable John V Eustace Judge
Mortimer W Smith Clerk
Frederick G Edrie Sheriff
Robert C Burchell State Attorney

Attest Mortimer W Smith Clerk

Be it Remembered that afterwards to wit
on Nov 1st AD 1860 a Proccipie was filed in said Court in
the words & figures following.

State of Illinois, Circuit Court of said County of the
Ogle County } November Term AD 1860.

John McDaniel

John Etnyre &
Albert B Light } Please issue Summons in the
above entitled cause in a plea of
Trespass on the case on promises

Damages Four Hundred dollars four &c

To M W Smith ex Clerk
of said Court

Henry A Chiles Attorney

on the back of which appears the following endorsement
Filed Nov 1, 1860 M W Smith Clk.

And on the same day a Bond for costs was filed in said

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cause in the words & figures following to wit:

John Mc Daniel

vs

John Estyngre and

Robert B Light

} In Ogle County - Circuit Court
of the November Term AD 1860.

I do hereby enter myself security for
costs in this cause and acknowledge

myself bound to pay or cause to be paid all costs which
may accrue in this action. either to the opposite party or
to any of the officers of this Court, in pursuance of the Laws
of this State

H A Mix

Dated this Thirtieth day
of October AD 1860

And afterwards to wit on the
1st day of November AD 1860 the Clerk of said Circuit Court
issued a Summons in said Cause in the words and
figures following to wit:

State of Illinois } The People of the State of Illinois to
Ogle County } the Sheriff of said County greeting;
We command you that you summon John Estyngre
& Robert B Light if they shall be found in your County
personally to be and appear before the Circuit Court of
said Ogle County on the first day of the next term thereof
to be begun and holden at the Court house in Oregon
in said Ogle County on the first Monday of November
instant - AD 1860 to answer John Mc Daniel in a
plea of Trespass on the case and promises to the damage of
the said Plaintiff as he say in the sum of Five
Hundred Dollars and here you them and these

this writ

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Witness Mortimer W Smith Clerk of our said Court
and the seal thereof at his office in Oregon in said County
this 1st day of November AD 1860

Seal

M W Smith Clerk

on the back of which summons appears the following
endorsement

State of Illinois

Ogle County I do hereby certify that I duly served the within writ on the within
named John Etzger and Robert B Light as I am
therein commanded, by reading the same in their presence
and hearing this 3^d day of November AD 1860

F. G. Petrie Sheriff

Filed November 5th AD 1860 M W Smith Clerk.

And afterwards to wit on the 8th day of March AD 1861
a declaration was filed in said cause in the words and
figures following to wit:

State of Illinois } In the Circuit Court of said Ogle
Ogle County } County of the March Term AD 1861

John McDaniel Plaintiff in this suit by H A
Mey his Attorney complains of John Etzger and Robert
B Light defendants in this suit who have been summoned
of a Plea of Trespass on the case on Promises. For that the
said defendants heretofore to wit on the Twenty eighth day
of April in the year of our Lord One thousand Eight hundred
and Fifty Six at Oregon to wit: At said County of Ogle
made their certain promissory Note in writing and

then and there delivered the same as made as aforesaid to Edwin R Stoddard in and by which said Note said defendants by the name style and description of John Strayer & R B Light jointly & severally promised to pay to the said Edwin R Stoddard or order on or before the first day of August 1856 the Sum of one hundred and fifty nine dollars & eighty four cents with use at Ten per cent from date for value Received which time of payment long since elapsed. And the said Edwin R Stoddard to whom or to whose ^{order} said Note was payable afterwards to wit on the day and year aforesaid at Oregon to wit at Ogle County aforesaid under the name and style of E R Stoddard endorsed said Note in writing by which said endorsement the said Edwin R Stoddard then and there ordered the said Sum of money in said Note mentioned to be paid to said Plaintiff and then and there delivered said Note so endorsed to said Plaintiff; by means whereof and by force of the Statute in such case made and provided the said defendants then and there became liable to pay ^{to} said Plaintiff said Sum of money mentioned in said Note and being so liable in consideration thereof then and there undertook and promised to pay the same to the said Plaintiff according to the tenor and effect of the said Note and of the endorsement aforesaid to wit at the place aforesaid.

And for that also

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the said defendants afterwards to wit: on the tenth day of October in the year of our Lord one thousand Eight hundred and eighty to wit at said County because and were indebted unto the said Plaintiff in a large sum of money to wit in the Sum of Five hundred dollars for money before that time lent and advanced to said defendants by said Plaintiff at said Defendants special instance and request - And also in like Sum for money before that time paid laid out and expended for said defendants by the said Plaintiff at the like special request of said defendants and in the like Sum for money before that time had and received by said defendants to and for the use of said Plaintiff - And in Five hundred dollars for interest due from the said defendants to the Plaintiff for and in respect of the Plaintiff having forbore and given day of payment of money due from the defendants to the Plaintiff at the Defendants request for a long time then elapsed; And also in the like Sum for goods wares and merchandize before that time sold and delivered by said Plaintiff to said defendants at their ^{like} special instance and request - And also in the like Sum for ^{the} labor care and diligence of said Plaintiff before that time done and performed by said Plaintiff for said defendants and at the like instance and request of said defendants and also in the like Sum then and there found to be due and owing to said Plaintiff on an account stated ~~between~~ between them; and being so indebted, said Defendants, in consideration thereof, then and there undertook and

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promised to pay said Plaintiff said several sums of money above mentioned, when thereunto afterwards requested. Yet the said defendants not regarding their said promises and undertakings but contriving & although often requested so to do have not paid said Plaintiff any or either of said sums of money above mentioned, or any part thereof but so to do have hitherto wholly neglected and refused, and still do neglect and refuse to the damage of said Plaintiff of Five hundred dollars. and therefore he brings this suit &c.

A. A. Mix Plaintiff's Attorney -

Copy of Instrument and Account sued on:

\$159.84. — On or before the first day of August 1856, we or either of us promised to pay Edwin R. Stoddard or order the sum of One hundred and fifty nine dollars & 84 cents for value received with use at ten per cent from date

Oregon April 28th 1856

John Etnyre

Endorsed on back

R. B. Light

E. R. Stoddard / —

John Etnyre and Robert B. Light

To John McDaniel

Dr.

October 10th A. D. 1860.

To money lent and advanced	\$ 500.00
To money paid, laid out, and expended	\$ 500.00
To money had and received to and for the use of said plaintiff	\$ 500.00
To Interest	\$ 500.00
To goods, wares and merchandize sold and delivered	\$ 500.00
To labor and services	\$ 500.00
To balance due on account stated	\$ 500.00

7 And afterwards to wit: on Friday November 9th A.D. 1860, the following proceedings were had among others, and entered of record in said Court to wit: -

N. 457 John McDaniel } Alumpuk
317 vs }
John Etnyre & Robert B. Light } that this cause be continued for service

It is ordered by the Court

And afterwards to wit: on the 13th day of Nov 1861, the said filff filed a note in said cause, in the words of figures following to wit: -

\$159.84 - On or before the first day of Aug. 1856. We or either of us promise to pay Edwin R. Stoddard or order the sum of one hundred and fifty nine dollars & 84 cent. for value received, with use at ten per cent from date

Oregon April 28th 1856 -

John Etnyre
R. B. Light

Endorsed as follows - "Received on within thirty two & 1/100 dollars (32.12) Jan'y 30th 1858" - "E. R. Stoddard" -
"E. R. Stoddard" - Filed Nov 13. 1861. F. G. Petrie Clerk

By B. F. Skute Defty

And afterwards to wit: on the 13th day of November A.D. 1861 the same being one of the days of the November Term ct. D. 1861, of said Court, the following proceedings were had and entered of record to wit

8 J. 59, John McDaniel } Akumpeit -
1855 vs } This day comes the plaintiff,
John Etnyre & Robert B. Light } by their attorney, and the defendants
come by Dutcher their attorney, and
now by agreement of parties, the intervention of a jury herein is waived
and this cause submitted to the court for trial. And the court
having heard the evidence and examined the proofs herein and being
fully advised in the premises, finds this case for the plaintiff and awards
his damages at (\$214⁸⁵) Two hundred fourteen & ⁸⁵/₁₀₀ dollars. And now
come the said defendants, and enter their motion, in arrest of judgment
and for a new trial herein, and the court having heard the said
motion, and the argument of Counsel thereon, overrules the said
motion - It is therefore considered that the plaintiff have and
recover of the defendants the said sum of Two hundred fourteen
& ⁸⁵/₁₀₀ dollars his damages awarded as aforesaid, together with
his costs in this behalf expended, and that he have execution therefor.
And thereafter the defendants pray an appeal of this cause to the
Supreme Court, which being heard is allowed by the court, upon
the said defendant filing Bond with Daniel Etnyre as security in
the sum of, (\$500) Five hundred dollars, within ten days from
this date -

And afterwards to wit: on the 19th of Nov. 1861, a Bill of
Exceptions was filed in said cause in said Court, in the words
and figures following to wit: -

9 In the Ogle County Circuit Court

November Term 1861 -

John McDaniel }
vs
John Etnyre & }
Robert B. Light }

Be it remembered that upon this day, this cause came on to be heard before the Honorable A. O. Wilkinson Judge, the intervention of a jury having been waived by the parties, and the plaintiff introduced in evidence a promissory note in the words and figures following to wit: -

"\$159.84 - On or before the first day of Aug. 1856. We or either of us promise to pay Edw. R. Stoddard or order the sum of One hundred and fifty nine dollars & 84 cents for value rec^d with use at ten per cent from date"
Oregon April 28th 1856.

"John Etnyre"
"R. B. Light"

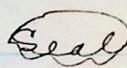
Upon the back of which said note appeared the following endorsements to wit: -

"3212 - "Rec^d on within thirty two \$12/100 dollars - Jan'y 30. 1858 - E. R. Stoddard -"

And is endorsed "E. R. Stoddard" in blank -

The said note and endorsements was all the evidence introduced on the trial. The court rendered Judgment in said cause against the defendants in favor of the plaintiff for the sum of two hundred & fourteen dollars and Eighty five cents damages, besides costs. To the finding and rendition of the said judgment the defendants by their Counsel then and there excepted and pray that this

their bill of Exceptions be signed and sealed by the Judge and made part of the record in this cause, which is done accordingly —

Fra O. Wilkinson 
Judge &c —

And afterwards to wit:— on the 23^d of Nov, 1861, a Bond was filed in said Cause in said Court, in the words and figures following to wit:—

Know all Men by these presents, That we John Etnyre Robert B. Light as principals, and Daniel Etnyre as security are held and firmly bound unto John McDaniel in the penal sum of Five hundred dollars, lawful money of the United State for the payment of which well and truly to be made, we bind ourselves one & each of our heirs, executors, administrators and assigns, jointly, severally & firmly by these presents —

Witness our hands & Seal this twenty second day of November A.D. 1861, —

The condition of the above obligation is such that whereas the said John McDaniel, did on the thirteenth day of November A.D. 1861, it being one of the days of the then November Term of the Ogle Circuit Court in the County of Ogle and State of Illinois, recover in said Court a judgment against the above bounden John Etnyre & Robert B. Light for the sum of Two hundred and fourteen dollars and eighty five cents & costs of a certain suit of Treasafe on the case on promise, from which said judgment of said Circuit Court

the above bounden John Etnyre & Robert B. Light have prayed
 an appeal to the Supreme Court of the State of Illinois
 now if the said John Etnyre & Robert B. Light shall
 prosecute their appeal with effect, and without delay and
 well and truly pay whatever judgment cost, interest & damages
 as may be awarded against them in case the said judgment
 shall be affirmed, then this obligation to be void otherwise to
 remain in full force & virtue

Witness

E. F. Dutcher

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3

John Etnyre

Robert B. Light

Daniel Etnyre

(Seal)

(Seal)

(Seal)

State of Illinois

Ogle County ss

J. Frederick G. Petrie Clerk of the

Circuit Court, in and for said County in
 said State, do hereby certify, that the above and foregoing
 is a true, full and correct transcript of the record and papers
 on file in said Cause, as the same appears by the record
 and files of my said office —

Witness J. G. Petrie Clerk of said Court

and the Seal thereof at Oregon, in said County

this 21st day of April A.D. 1862

J. G. Petrie Clerk

By B. S. Sheets Deputy

Costs of Issues \$3.50

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John Eurye steel
to
John McDonald
Record

Filed April 23. 1862
L. Selman
Clerk.