

SUPREME COURT OF ILLINOIS,

THIRD GRAND DIVISION.

APRIL TERM THEREOF, A. D. 1862.

DANIEL T. ELSTON,
ORIN J. ROSE, *et als.*, Plt'ffs in Error, } *Error to Cook.*
vs.
ROBERT DEWES, Def't in Error.

POINTS OF PLAINTIFFS IN ERROR.

I.

The assessment of damages was erroneous, and the judgment too large. The interest on the \$10,000 from 14th July, 1857, to 30th June, 1858, at ten per cent. per annum, was clearly less than \$962, whereas \$975 was included, making \$10,975, the amount of the judgment rendered.

The case of *Boyle vs. Carter*, 24 Ill., 49-51, is directly in point to show that this Court, for that error, will reverse the judgment, with costs to plaintiffs in error.

See written Brief filed

II.

The declaration did not show any existing right of action at the time the suit was commenced, the note not having matured, by the law merchant. The suit was commenced on the second day of grace.

Three days of grace apply equally, according to the custom of merchants, to bills of exchange and promissory notes, and

3 Jul 637-643
4 " 79-83

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the maker has till the close of reasonable business hours of the third day of grace to pay. 3 Kent Com. 100.

This is the understanding of merchants, bankers, and the bar, in the United States. The Supreme Court of Massachusetts, in *Wood vs. Corl*, 4 Metcalf, 205, say: "We consider it well settled, that by the general law merchant, *which is part of the common law*, as prevailing throughout the United States, three days of grace are allowed on bills of exchange and promissory notes," unless by special contract or special custom, a different rule prevails. In Illinois there had been no legislation upon the question prior to 1861. The commercial custom has generally regarded days of grace as applicable to both bills and promissory notes, and this Court have decided they are allowed on bills.

And in 25 Ill. 333-6, where the question of days of grace upon promissory notes was suggested, this Court declined to discuss it, as the record did not present the question.

BURNHAM & MARTIN,
Atty's for Pl'tffs in Error.

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Plfr. Points

See Written Brief

On file

Filed Apr. 25, 1862

L. Sel and

Ch.