Fitzgerald *versus* Caldwell's Executors.

THE original cause being remitted to the Supreme Court, upon the decision of the High Court of Errors and Appeals, (1) this *scire facias* was brought to enforce the judgment against *Caldwell's* executors, returnable to *September* term 1798; and issue was therein joined upon the plea of "Payment."

To maintain the plea, the defendant's counsel recapitulated the facts set forth in the report of *Fitzgerald* v. *Caldwell*, 2 *Dall. Rep.* 215.; and contended, that, while the attachments were depending, *Caldwell* was not liable for interest; that as soon as the original question had been decided, upon the trial of one of the attachments, (in *January* 1793) favourably to the claim of the present plaintiff, *Caldwell*, at his own peril, paid the principal sum, due at the time the note was given to *Fitzgerald*;(2) that no question of interest was decided by the High Court of Errors and Appeals; and that the judgment of that Court, is not a bar to the inquiry, in the present suit, whether any thing is due, either for principal, or interest.

For the plaintiff, it was urged, that by the agreement of the parties, the judgment *nisi*, rendered on the report of the referees, in *January* 1791, was made absolute, with a stay of proceedings, till one of the attachments should be tried; that this judgment, being for a sum certain, to wit, 5009*l.* 5*s.* 1*d.* carried interest, of course, unless the terms of the agreement, or the operation of law, in cases of attachment, affected the right; 1 *State Laws*, 13. *Dall. edit.* that in point of morality, as well as law, *Caldwell*, who had long detained, and advantageously employed, the money of another man, was bound to make a reasonable compensation for the use; that the decision of the Supreme Court, releasing *Caldwell* from the payment of interest, was the very foundation of the writ of error; and that the High Court of Errors and Appeals

(1) See the case, on which the writ of error was instituted, 2 *Dall. Rep* 215. And the judgment of the High Court of Errors and Appeals, *Ibid.* 216. (*)

(2) The principal sum paid, was the amount due in *April* 1782: not the amount reported to be due by the referees (5009*l.* 5*s.* 1*d.*) and for which the judgment was rendered absolute as of *January* 1791. The claim of the plaintiff, on the *scire facias*, was, therefore, founded upon the following calculation:

Report of referees in *January* 1791, ...	£. 5009 5 1
Two years interest, till payment in *January* 1793, . . .	601 0 0
	5610 5 1
Deduct the amount paid in *January* 1793, . . .	3250 0 0
	2360 5 1
Interest on the balance till payment.	

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1802. (whose sentence could not now be revised, modified, or annulled) had not only affirmed the judgment rendered in *January* 1791, for the fixed sum of 5009*l.* 5*s.* 1*d.*, but had expressly reversed the order to discharge *Caldwell*, on payment of the principal sum.

SHIPPEN, *Chief Justice.* We have neither the power, nor the inclination, to impair the judgment of the High Court of Errors and Appeals, by asserting a contrary opinion, in point of law; nor by admitting evidence to undermine its authority with the jury. The judgment of *January* 1791, with all its legal incidents, can only now be affected, by proof of actual payment and satisfaction. As to the principal sum for which the judgment is affirmed (5009*l.* 5*s.* 1*d.*) there must be no dispute; and we can only now consider that part of the defendant's argument which insists, that, at least, upon the amount of the judgment, no in rest ought to be allowed.

An act of the general assembly has declared, "that lawful in-" terest shall be allowed to the creditor, for the sum, or value, "he obtained judgment for, from the time the said judgment " was obtained, till the time of sale, or till satisfaction be made." 1 *State Laws*, 13. Interest is, therefore, generally speaking, a legal incident of every judgment: but, it is contended, that the present case ought to be excepted from the rule, because an immediate payment was not contemplated by the parties themselves; and because the judgment was made absolute, on the express condition, that it should wait the trial of certain foreign attachments.

The agreement, on which the judgment was made absolute, is recognised in the decision of the High Court of Errors and Appeals, "according to its terms." The genuine meaning of its terms can only be ascertained, by considering what was the real subject in dispute under the attachments. In the attachment that was tried in *January* 1793, the dispute appeared to be simply, whether the evidence of *Moore's* interest in the debt, due from *Caldwell* to *Vance*, *Caldwell* and *Vance*, amounted to an assignment, legal or equitable. The meaning of the agreement, therefore, must have been to stay proceedings on the judgment, till that subject was investigated. Now, the subject was completely investigated on the trial, to which I allude; and the jury determined, that the debt did not remain subject to attachments, as a debt still due to *Vance*, *Caldwell*, and *Vance*; but had been previously appropriated and assigned to *Moore* and *Johnson*. It is true, that the decision of the High Court of Errors and Appeals recognises the agreement generally; and that the agreement, in its own general terms, embraces a trial of all the attachments: but, if the first attachment could not prevail, it is improbable that any subsequent attachment would succeed; and, I repeat, that in the spirit

spirit of the agreeement, a discussion and decision of the principle, was alone contemplated.

In this view of the case, the only point to exercise the discretion of the Jury, will be (not whether any interest shall be allowed upon the judgment, but) from what period the interest shall begin to run. The judgment being made absolute by the agreement, a reasonable time should, perhaps, be allowed for a trial, as contemplated by the terms of the agreement; but when the trial in *January* 1793, had fixed the right of *Moore* and *Johnson* to the debt, as assignees of *Vance*, *Caldwell* and *Vance*; and when *Caldwell* himself had acquiesced, in the verdict, by paying what he thought due, without demanding an indemnity; the Court cannot perceive any legal, or equitable, ground, upon which the right of interest should be longer suspended.

Upon the whole, we think, that interest ought not to be allowed, upon the sum fixed by the judgment of *January* 1791, until the decision in *January* 1793; but that the interest ought to run from that period. Although *Caldwell* himself asked no indemnity, on the payment which he made, we shall think it proper, in aid of the executors, to direct an indemnity against the attachments to be given, before the amount of the verdict, on this occasion, is paid.

Verdict for the plaintiff. (1)

E. Tilghman, *Lewis*, and *Dallas*, for the plaintiff.
Ingersoll, and *M'Kean*, for the defendants.

The Commonwealth *versus* Gibbs.

THIS was an indictment, on the 17th section of the election law (4 *State Laws*, *p.* 342. *Dall. edit.*) which provides (among other things) that "if any officer of the election shall be "threatened, or violence used to his person, or interrupted in "the execution of his duty, every person who shall be guilty of "such intimidation, threats, violence, or interruption, being con-"victed thereof, shall be fined and imprisoned for the same, at "the discretion of the Court, not exceeding six months imprison-"ment, nor exceeding one hundred dollars fine."

The facts were briefly these: Mr. *Beckley*, the prosecutor, was appointed a judge, at the general election in *October* 1801. Mr. *Gibbs*, the father of the defendant, presented his ballot, but before accepting it, Mr. *Beckley* insisted, that he should answer the following questions: 1st. Did you, at any time during the

(1) The indemnity was given to the satisfaction of the Judges, and the executors paid the amount of the verdict into Court. Thus terminated in 1802, a suit commenced, in fact, twenty years before, in 178[illegible]

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