SUPREME COURT

OF

PENNSYLVANIA.

December Term 1803.

Crawford *et al. versus* Willing *et al.*

THIS was an action of account render, brought by *Crawford* and Co. of *Rotterdam* against *Willing* and *Morris* of *Philadelphia.* There was a judgment *quod computent*, under which the auditors reported, " that the sum of 1658*l.* 11*s.* 8*d. Pennsylvania* currency is due from the defendants to the plaintiffs; but not being agreed, with respect to an allowance of interest, they submit that point to the Court." The plaintiffs thereupon filed a *suggestion*, " that the defendants ought to be charged 3770*l.* 15*s.* for interest, on the several sums of money by them accounted for, in their account, mentioned in the report of the auditors; and that the plaintiffs are entitled to have and recover from the defendants the said sum of 3770*l.* 15*s.* as well as the principal." To this suggestion the defendants *pleaded*, 1st. " That they ought not to be charged with the said sum of 3770*l.* 15*s.* for interest, &c. and that the plaintiffs are not justly entitled to have and recover the same, &c. because, they say, that the same, or any part thereof, is not justly due from the defendants to the plaintiffs: and this they pray may be inquired, &c." 2d. Payment of the principal sum. 3d. The bankruptcy and certificate of *Morris*, one of the defendants. Issue was joined on the first plea; and the second and third were confessed.

On the evidence, it appeared, that the transactions on which the debt to the plaintiffs was founded, occurred before the year 1775; that during the years 1775 and 1776, and during several years after the war, the debt was repeatedly acknowledged, and a remittance of the amount promised, in a correspondence between the plaintiffs and *Morris*, as the acting partner of the defendants; that

that the partnership commenced by articles dated the 1st of *January* 1773, and continued for five years; that the partnership was renewed, taking *Swanwick* in as a partner in the year 1783; that partial remittances were made by *Morris* in the year 1786, which reduced the balance of the principal sum to the amount reported by the auditors; and that *Willing* never knew of the plaintiff's demand, until the present suit was amicably instituted by agreement with *Morris* alone, dated the 4th of *August* 1798. 1803.

E. Tilghman and *Ingersoll*, for the plaintiffs, proposed to inquire, 1st. Whether considered as a commercial case, generally, it is not a case in which interest ought to be allowed? 2d. Whether the special circumstances of the case, exclude the claim of interest, with reference to the law of partnership? 3d. Whether the case is affected by the existence and operation of the revolutionary war?

1st. It is true, that, in the old books, the claim of interest upon simple contract debts, is treated with great rigour, and allowed only in the case of a note; but the law, gradually accommodating itself to common sense and common honesty, is at length settled, that for money lent; for liquidated balances: nay for goods sold and delivered, where the usual credit is expired; for money detained, which ought to be paid over, and during the continuance, as well as before the commencement of a suit; the creditor shall be entitled to interest. 1 *Dall. Rep.* 349. 1 *Fr. Vezey*, 63. *Rep. temp. Hard.* (*Ridgway*) 286. 1 *Vez.* 310. 3 *Br. Ch.* 436. *Doug.* 361. And, under circumstances of vexatious delay, interest may be recovered, even beyond the amount of the principal. *Atk.* 80. 2 *Vez. j.* 300.

2d. The debt was contracted, the correspondence was carried on, during the existence of the partnership, between *Willing* and *Morris*. Each partner was, therefore, liable, not as a surety, but as a principal, for the lawful contracts and transactions of the other, in relation to their joint business. 1 *Wils.* 682. 3 *F. Vez.* 277. *Bankrupt Act of Congress*, *s.* 34. *Doug.* 629.

3d. The Courts of *Pennsylvania* (differing in their view of the subject from the federal Courts) have made an abatement of interest during the continuance of the revolutionary war (a period computed at seven years and a half) in suits brought by *British* creditors, against *American* citizens, the immediate parties to the war: but there is neither law, justice, nor precedent in any Court, for applying the rule to suits brought by the citizens of a neutral, or friendly, nation: And as to the practicability, as well as the lawfulness, of a remittance, it is notorious, that the intercourse between the *United States* and *Holland* was never suspended, at any period of the contest.

Lewis, for the defendants, stated his general position to be, that interest is not due of course, upon an account current; or an unliquidated

1808. liquidated debt. 1 *Wils.* 376. 3 *Wils.* 205. 1 *Dall.* 349. *Doug.* 361. 1 *Dall.* 265. 3 *Dall.* 313. 1 *P. Wms.* 376. 3 *P. Wms.* 205. *Doug.* 361. *Durden* v. *Gaskill*; and that the peculiar circumstances of the present case, will not warrant a departure from the general rule. The cases cited for the plaintiffs are, indeed, inapplicable to the real point at issue. Thus, 1 *Dall. Rep.* 349, was the case of a single sum of money, received at one time, by the defendant from the plaintiff's agent; not the case of an open, running, account. The cases in 1 *F. Vez.* 63, and *Ridgw.* 286. go no farther than to show, that when a sum is ascertained to be due, by settlement, or liquidation, of accounts, interest begins to run. The case in 1 *Vez.* 310, contains, indeed, the strong expression, that interest follows the principal, as a shadow does the substance; but the expression must be applied to the subject before the Court: which was a legacy, for the education of a child, bearing interest from the very nature of the bequest. And the case in 1 *Wils.* 682. arose upon a joint and several *bond*.

To the general position, however, that interest is not payable, in cases of account current, and other simple contract debts, *Lewis* admitted there were various exceptions: 1st. Where there is an express contract to pay interest. 2d. Where the accounts have been settled, and a liquidated balance ascertained. 3d. Where a debt consists of a single sum of money, and no account current has been raised between the creditor and debtor. 4th. Where there has been an unreasonable detention of money, after a demand of payment, or a refusal to come to a settlement. But, he insisted, that there was no authority, in any case, to justify a verdict for interest, beyond the amount of the principal; not even upon a bond, if the creditor has neglected to demand payment for several years. 14 *Vin. Abr.* 460.

But, adverting to the peculiar circumstances of the case, *Lewis* contended, 1st. That there was a wide distinction between the responsibility of *Morris*, and that of *Willing*: the correspondence being exclusively with the former, and no demand of payment, no notice of the claim, to the latter, till 1798, long after the dissolution of the partnership. The act, or assumption, of one partner, to bind the company, must take place during the continuance of the partnership; and here the only promise made by *Morris*, during the partnership, was in the year 1775; before the money was received, and merely importing, that the defendants would remit it, when it was collected; which, surely, is no foundation for the charge of interest. 3 *Bac. Abr.* 517. 2 *Ventr* 151. So far, therefore, as respects *Willing*, it is a stale demand, against which every presumption will be made. *Cowp.* 215. 1 *Wils.* 742. 1 *Atk.* 493. *Gilb. Eq.* 224. 2d. That the operations of the war, and the high state of exchange, afford a justification for not remitting till the peace of 1783; and after that epoch, no demand was made upon *Willing*, till the suit was brought.

By

By the COURT: (1) The auditors have ascertained the principal sum, that is due from the defendants to the plaintiffs; leaving to the Court the question of interest. The only point now to be decided, therefore, is whether any, and what, interest, ought to be paid upon the debt so ascertained? 1803.

The inquiry has been naturally, and fairly, pursued, under the considerations suggested at the bar: 1st. Whether, on general principles, it is a case, in which interest can be allowed? 2d. Whether any circumstances, peculiar to the case, in relation to the parties, should prevent the allowance of interest here, in opposition to a general rule? 3d. Whether the effect of the revolutionary war was such, as to suspend the right to interest, for any, and for what, period?

1st. Whatever may have been the doctrine in former times, we have traced, with pleasure, the progress of improvement, upon the subject of interest, to the honest and rational rule, that, wherever one man retains the money of another, against his declared will, the legal compensation, for the use of money, shall be charged and allowed. From the single case of a promissory note, the instances, in which interest is allowed, have been so multiplied, year after year, that few remain to be added to the legal catalogue. In *Pennsylvania* the policy is older, and still, perhaps, more extensive, than it is in *England*. There, even at this day, an action must be brought upon a judgment, in order to recover interest upon it; but here, our act of assembly, so early as the year 1715, made the interest an inseparable incident of the judgment. For my own part, I am prepared to say, with the book cited, that interest ought to follow a debt, as the shadow does its substance. Even, in the case of goods sold and delivered, I would think it right to allow interest, as soon as the express, or the implied, term of credit had elapsed, and a demand of payment was made. (2)

In the present action, there can be no doubt, that the balance had long been ascertained and acknowledged. In *England*, it is the practice of merchants to balance their accounts annually; and, by that means, the interest of each year becomes principal, in the new account of the succeeding year. Without adopting that practice, it is clearly our opinion, that the defendants are liable for the interest actually claimed, unless some special reason exempts them from the general obligation of merchants.

(1) This cause was tried before SMITH, and BRACKENRIDGE, *Justices*; the CHIEF JUSTICE declining to sit, on account of his relationship to Mr. *Willing*; and YEATES, *Justice*, being absent, on account of indisposition. The charge was delivered by Judge SMITH.

(2) In the course of the trial, SMITH, *Justice*, declared, that the authority of 1 *Dall.* 265. (laying down the rule, that interest was not payable for goods sold and delivered) had been often overruled.

1803. 2d. The circumstances suggested, to distinguish the responsibility of Mr. *Willing*, from that of his partner, are not a sufficient legal, or equitable, answer, to the demand of the plaintiffs. In *Watson's* treatise, on the law of partnership, the cases on this point are collected and arranged. The result of the whole is, that, during the partnership, all the partners are answerable for the acts of each. It is no ground of discrimination in this respect, which partner actually received the funds; which was intrusted to transact the business, or which was ignorant of the state of the debit and credit, of the company books. If, indeed, a public notice is given by one partner, of the dissolution of a partnership; and creditors, unreasonably neglecting it, will place funds in the hands of the other partner, they must take the consequence of their own imprudence. But the present case is free from every embarrassment of this kind. The debt was contracted during the partnership; and all that was written about it, both before, and after, the termination of the partnership, was written by Mr. *Morris* alone, without any objection, on the part of Mr. *Willing*; whose conduct, on the contrary, gave reason to presume consent and approbation.

3d. Nor will the effect of the revolutionary war, furnish the defendants with a justification, or excuse, against the claim of interest. We all know the eminent services of Mr. *Morris* to his country; and the pre-eminent credit of the house of *Willing* and *Morris*, throughout the war. But these very advantages show, that the defendants, of all men, had it in their power to remit the funds, for the payment of their debts, due in neutral countries.

This, then, is our general position: the defendants are liable, for the payment of interest, from the time the money was in their hands, demanded and neglected to be paid, until the war; during the war, if remittances could safely be made; and (if they could not be safely made during the war) then from the peace of 1783, until the actual recovery of the principal.

Unless, upon the whole, the jury can discover some ground of excuse, which we have not been able to trace, the interest ought to be allowed, in justice to the plaintiffs: and, we will add, in justice to the commercial character of our country.

The jury found a verdict for the plaintiff, for 4422 dollars and 89 cents. (3)

(3) This sum, it is plain, was not equal to one half of the interest claimed (and the calculation of interest was in a mode favourable to the defendants) but it was exactly equal to the principal sum reported by the auditors. It is presumed, therefore, that the jury thought the interest ought not to be allowed beyond the principal.

Crammond