RECENT ENGLISH DECISION.

GIBBS AND OTHERS *vs.* FREMONT.[1]

In an action against the drawer of a bill of exchange not bearing interest, which has been dishonored by non-acceptance, if the jury find the plaintiff entitled to interest by way of damages, the measure of damages is the rate of interest at the place where the bill was drawn.

July 6, 1853.—This was an action by the plaintiffs, as indorsees of several bills of exchange, drawn by the defendant in the following form:—

"Los Angelos, Upper California.—March 18, 1847.—At ten days' sight of this, my second of exchange, (first and third remaining unpaid), pay to F. Huttman or order 6,000 hard dollars, for value received, and charge the same to the account of your obedient servant, J. C. Fremont, of the United States, Washington, Governor of California.—To Hon. J. Buchanan, Secretary of State of the United States, Washington." There were other similar bills, making in the whole 19,600 dollars.

At the trial, before Alderson, B., at the Middlesex Sittings, in Easter term, it appeared that the defendant, on the occasion of his conquering California, having need of money, had drawn these bills, which had been discounted by F. Huttman, upon the Secretary of State at Washington; and that they were duly presented for acceptance in October, 1847, the defendant then being at Washington, but dishonored. The rate of interest at Washington was found by the jury to be six per cent., and in California twenty-five per cent. The jury also found that there was damage to the plaintiffs which they ought to receive as interest, but that that damage was only to be calculated at six per cent. The verdict was according entered for the amount of the bills, and interest at six per cent., with liberty to the plaintiffs to move to increase the damages by the addition of nineteen per cent.

[1] 22 L. J. Exch. 302.

A rule was accordingly obtained by Sir *A. E. Cockburn*, (the Attorney-General), against which cause was shown by

Bovill and *Aspland*.[1]

Willes, in support of the rule.

Judgment was delivered by

ALDERSON, B.—The general rule in all cases like the present is, that the *lex loci contractus* is to govern in the construction of the instrument, but that applies only when the contract is not express; if it is special, it must be construed according to the express terms in which it is framed. Now, a bill drawn on a third person in discharge of a present debt is, in truth, an offer by the drawer, that if the payee will give time for payment, he will give an order on his debtor to pay a given sum at a given time and place. The payee agrees to accept this order, and to give the time, with a proviso that if the acceptor does not pay, and he, the payee, or the holder of the bill gives notice to the drawer of that default, the drawer shall pay him the amount specified in the bill, with lawful interest. This is, then, the contract between the parties. If the interest be expressly or by necessary implication specified on the face of the bill, then the interest is governed by the terms of the contract itself; but if not, it seems to follow the rate of interest of the place where the contract is made; so if the mode of performing it be expressly or impliedly specified, as was the case of *Rothschild* vs. *Currie*.[2] In the case of a bill drawn at A, it *prima facie* bears interest as a debt at A would, if nothing else appeared; but if that bill be indorsed at B, the indorser is a new drawer, and it may be a question whether this indorsement is a new drawing of a bill at B, or only a new drawing of the same bill, that is, a bill expressly made at A. In the former case it would carry interest at the rate at B, in the latter at the rate at A; and on this subject we find a difference of opinion in the books,—Mr. Justice Story, in his *Conflict of Laws*, s. 314, maintaining the former, and *Pardessus*, *Droit du*

[1] Before Pollock, C. B., Alderson, B., Platt, B., and Martin, B. The arguments of counsel are omitted from want of space.

[2] 1 Q. B. Rep. 43; S. C. 10 Law J. Rep N. S. Q. B. 77.

Commerce, art. 1500, maintaining the latter opinion. But this case is a contract at San Francisco, by which the defendant there offers to pay to the payee, in discharge of a debt due there, the payment at Washington, by the acceptor thereof, of a given sum. That sum is not paid. The defendant's original liability then revives on notice of dishonor duly given to him, and the defendant has become liable to pay as he was liable at the first. At first he was clearly to have paid the money at San Francisco, and if he did not, he would have been liable to pay interest at the usual rate in California, for a period as long as the debt remained unpaid: and that is the amount which he ought to pay now. This point was expressly ruled in *Allen* vs. *Kemble*.[1] It was also so ruled in *Cougan* vs. *Bankes*;[2] and this is not to be left to the jury, for it depends on the rule of law. The amount of interest at each place is to be so left; so is the question whether any damage has been sustained by non-payment of interest at all—for these are questions of fact. Here the jury have found interest was due, and that there was damage which ought to be recovered in the shape of interest. They also have found what the usual rate of such interest is at Washington, and what the usual rate of such interest is in California; but which rate is to be adopted by them is, so we think, a question purely of law for the direction of the Judge to the jury. We think the direction in this case should have been that the California rate of interest should be adopted by them, inasmuch as the contract was made in California; and, therefore, this rule must be absolute, to enter the verdict for the plaintiffs, with nineteen per cent. additional interest to the six per cent. already allowed.

Rule absolute.

[1] 6 Moore's P. C. 314.

[2] Chitty on Bills, 683, 9th ed.