Henderson, Stephen v. McPike, Henry 1844 S12/5

631/32 25/255

Henderson Dn Er (R)
(P)

V

McPike Pin E (A)
(D)

DP Dyer P1
& Henderson
RA Campbell

Pike Cty
Oct 64
Sept 64

negotiated
PN - McPike to Hend 30 days after dem

$480 in gold 10% per annum

Dryde
Reversed & Remand for ↗ 393.54 out of which
Costs & expenses paid
Pin E Pay Lawrence

The State of Missouri, ss.

The State of Missouri, to the Honorable the Judge of the Third Judicial Circuit **in said State—Greeting:**

WHEREAS, In the record and proceedings in a certain cause lately pending in the Pike County Circuit Court

wherein Stephen Henderson was Plaintiff and Henry C. Wise Pike was defendant

in a Civil action manifest error hath intervened, to the great damage of said Defendant as by his complaint we are informed.

NOW, being willing that the error, if any there be, should be corrected, and full and speedy justice done to the parties aforesaid, in that behalf, COMMAND YOU, that you send to us, certified under your seal, the record and proceedings in the cause aforesaid, as fully as the same remain of record before you in said Court, so that we may have them before us at our Supreme Court, to be begun and held in the City of St. Louis, in the County of St. Louis, in said State, on the Third Monday in March next, so that our Judges of our Supreme Court, on inspecting the record and proceedings aforesaid, may cause to be further done therein, for correcting the error, what of right, and according to law, ought to be done.

WITNESS, ~~WILLIAM S. GLANVILLE~~ Andrew W. Mead, Clerk of our said Supreme Court, at office in the City of Saint Louis, the 16th day of December in the year of our Lord one thousand eight hundred and ~~fifty~~ Sixty three

Andrew W. Mead CLERK.

(2)

State of Missouri
County of Pike } ss. I James M
Martin

Clerk of the Circuit Court within and for the County aforesaid in obedience to the mandate of the within writ, herewith transmit to the Supreme Court of Missouri, a full true and Complete Copy & transcript of the record and proceedings in the within Entitled Cause as fully as the same remain of record and on file in my Office

In Testimony Whereof I hereto set my hand and affix the seal of said Court at Office in Bowling Green this 26th day of December 1863

Ja. M. Martin Clerk

By John W. Martin D.C.

State of Missouri }
County of Pike } Be it remembered
that heretofore to wit on the 13th day of
August A.D. 1862 Stephen Anderson
caused to be filed in the office
of the Clerk of the Circuit Court
for said County. his Petition in the
words and figures following viz:—

Petition

"Stephen Anderson Pltff } In the Pike
vs. } Circuit Court
Henry C. McPike Deft } Sept. Term 1862

Plaintiff States that the
defendant by his Certain promissory
note herewith filed dated March 31st
1862. promised for value received to
pay to the order of Plaintiff the
sum of Four Hundred & Eighty
Dollars thirty days after the date
thereof negotiable and pay allow-
ment defalcation or discount and
with interest from date at the rate
of 10 per cent per annum. and if
the interest is not paid annually
to become as Principal and bear
the same rate of interest. the
amount to be paid in Gold. Plaintiff
further States that no part of said
note and interest has been paid

but that the full amount of both remains due and unpaid for which plaintiff asks Judgment.
D. P. Dyer Pltffs Atty

D P Dyer attorney for Plaintiff makes oath and says the above petition and the matters and things as therein stated are true to the best of his knowledge & belief.
D P Dyer.

Subscribed & Sworn to before me the 11th day of Aug - 1862.
J. M. Martin Clerk

The note upon which said petition was brought is in the words and figures following viz:—

Copy Note "$480.— March 31st 1862—
Thirty days after date I promise to pay to the order of Stephen Henderson Four Hundred & Eighty Dollars for value received. negotiable and payable without defalcation or discount

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and unto interest from Date at the rate of ten per cent per annum and if the interest be not paid annually to become as principal and bear the same rate of interest In Said

Henry C. McPike

Upon which petition of plaintiff the Clerk of Said Court issued a Summons in the words figures following viz"

"

Summons

County of Pike. S.S.

The State of Missouri to the Sheriff of Pike County Greeting.

We Command you to Summons Henry C McPike to appear before the Judge of our Pike County Circuit Court on the first day of the next term thereof to be held in the Town of Bowling Green within and for the Said County of Pike on the first Monday of September next there and there to answer to the Complaint of Stephen Henderson as Set forth in the annexed petition and have you there and there this writ

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Witness. James M Martin Clerk of Said Court with the Seal thereof hereto affixed at office in the Town of Bowling Green in Said County this 13 day of August in the Year of our Lord eighteen hundred and 62.

L S

J M. Martin Clerk

And afterwards to wit on the 13th day of August 1862. the Sheriff of Said County. endorsed upon Said Summons. his return in words & figures following viz"

Sheffs Return.

"State of Missouri }
County of Pike } I executed the within writ by delivering the Copy of Petition Sent out with the same and reading this writ in his hearing in Said County on the 13th day of August A D 1862.

Robert. Steele Sheriff

And afterwards at a Circuit Court Continued and held at the Court House in Bowling Green in Said County. to wit on the 3d day of March 1862 before the Hon T H Fagg Judge thereof

5 the following among other proceedings appear of record viz"—

Demurrer to Pfff— Peter filed "Stephen Henderson Plaintiff v Henry C. McPike Defendant } Petition on Note

Now at this day said defendant comes by Hugh Allen attorney and files his demurrer to the plaintiffs petition—

And afterwards at a Continuation of said Circuit Court to wit on the 6th day of March 1863 the following appears of record viz"—

Answer of Deft filed "Stephen Henderson Plaintiff vs. Henry C. McPike Defendant } Petition on Note

Now at this day said Henry C. McPike comes by Hugh Allen attorney and files his answer to the plaintiffs petition—

Which answer of the defendant is in the words and figures following viz—

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Defts Answer

"Stephen Henderson Relff.

vs

Henry C. McPike Defft.

In the Circuit Court in and for the County of Pike in the State of Mississippi March Term 1863—

This defendant Henry C. McPike for answer to the plaintiffs petition in the above entitled cause says that it is true as stated in the plaintiffs petition that on the 31st day of March 1862. he gave his note to the plaintiff as therein stated for the sum of Four hundred and eighty dollars as therein charged Defendant further states that on the 9th day of April 1862. the plaintiff made and delivered to William W. Hedges his promissory note of that date which is herewith filed dated on the day and in the year last aforesaid by which the plaintiff promised to pay said William W. Hedges six One day after the date thereof Two of Hundred and fifty Dollars negotiable and payable without defalcation or discount. And

7 that on the 9th day of April 1862. Said William W Hedges by the name of W W Hedges for value received of the plaintiff Sold assigned and in writing endorsed Said note to and then Delivered the Same to the plaintiff That the plaintiff has never paid Said note or any part thereof but is justly indebted to the defendant therefor. Wherefore the defendant asks that Said Sum of two hundred and fifty dollars that being the amount of Said note and the interest on the Same at 8 per Cent per annum from the 10th day of April 1862. Shall be Sett off and allowed to the defendant against the plaintiff Defendant for further answer to the plaintiffs Petition Says he is indebted to the plaintiff for the balance of the principal and interest on the note described in the plaintiffs petition and that Said balance and all costs of this Suit. after allowing Said demand of this defendant as aforesaid. now amounts to the Sum of two Hundred and Sixty Seven Dollars and now brings

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the Same into this Court for the plaintiff. therefore the defendant asks to be dismissed and that he may recover all costs which may hereafter accrue in this action

Hugh Allen
Atty for defendant

Henry C McPike on his oath Says that the above and foregoing answer and the matters and things as therein stated he believes to be true —

Henry C McPike

Subscribed and Sworn to before me on the — day of February 1863.
Hugh. F. Summers J.P.

And also the Same day and year aforesaid to wit the 6th March 1863. the following appearance record viz —

"Stephen Henderson Plaintiff vs Henry C McPike Defendant } Plea in Note

Leave to withdraw Demurrer

9. Now at this day the defendant Comes by Hugh Allen his attorney and on Motion leave is given him to withdraw the demurrer herein filed —

And afterwards to wit on the 11th day of March 1863. the following appears of Record viz"

Pfff's files reply to defts Answer.

"Stephen Henderson Plaintiff } Petition on Note
v.
Henry C McPike Defendant }

Now at this day Said Plaintiff Comes and files his reply to the defendants answer —

Which reply of the Plaintiff is in the words and figures following viz

"Stephen Henderson Pfff } In the Circuit Court March Term 1863.
vs.
Henry C McPike Defts }

Plaintiff for reply to the answer of defendant filed herein admits that he on the 9th day

of April 1862. made and delivered to Wm W Hedges his promissory note for the Sum of Two Hundred & fifty Dollars payable One day after the date thereof as Stated in the answer of Said defendant But the Plaintiff further States that the Consideration of Said last Mentioned note was a note given to the Said Hedges by One Mary Williams which the Said Hedges assigned to this Plaintiff That Said note last Mentioned was for the Sum of Two Hundred & ninety two and 91/100 Dollars for which Plaintiff executed his note to Said Hedges for the Sum of Two Hundred and fifty dollars as before Stated. Plaintiff States that in the taking of Said note there was a Manifest Clerical Mistake that instead there being due and owing the defendant Hedges by Pltff. the Sum of Two Hundred & ninety two & 91/100 Dollars She owed him in truth and in fact only the Sum of One Hundred and Eighty Six and 91/100 Dollars.

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and that Said note Should have been given for that amount and It was intended to have been given for Said amount. and It Should be Credited with that discrepancy Plaintiff Says that the amount to which the defendant is entitled as an offset in this Suit is the Sum of One Hundred and Eighty Six 9/100 Dollars. with interest thereon at the rate of 6 per cent per annum from the date of Said note — Plaintiff avers that Said note was not assigned. as averred to Henry C. McPike nor was It assigned or endorsed by Hedges the Payee. on the 9th day of April 1862. or at any time before Maturity thereof —

D P Dyer
Pro Pltff

Stephen Henderson upon his oath States that the Matters and things as Stated in the above reply are true to the best of his Knowledge & belief

Stephen Henderson

12 Subscribed & Sworn to before me this 11th day of March 1863.
J W Martin Clerk

And afterwards to Wit on the 13th day of March A D 1863. the following appears of Record"

Deft files Amended Petition

"Stephen. Henderson Plaintiff } Petition
v. } in
Henry. C. McPike Defendant } Trover

Now at this day said Plaintiff Comes by John. B. Henderson Esq his attorney and files his amended Petition -

Which Amended Petition is in the words and figures following viz -

"Stephen Henderson } Petition
vs } in
Henry C McPike } Trover

Deft amended Petition

Plaintiff by leave of the Court files this his amended Petition and Says that Defendant by his promissory note herein annexed dated

13. March 31st 1862. Promised for value received to pay to the Order of Plaintiff Four Hundred and Eighty Dollars thirty days after the date thereof and negotiable and payable without defalcation or discount with interest at ten per Cent per annum from date the interest to be paid annually or to become a part of the Principal and bear the Same rate of interest as the Principal. the amount of Said note and interest to be paid in gold as Plaintiff Says that Said note and interest are due and unpaid to Plaintiff that Defendant though often requested So to do has wholly refused or failed to pay Said note whereby Plaintiff is damaged in the Sum of One thousand Dollars and therefore Sues and asks Judgment for the Same together with interest and Costs of Suit

S. B. Henderson atty

Stephen Henderson on oath Says that the foregoing Petition and the Matters and things therein as Stated are

14 true —

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Stephen Henderson

Subscribed and Sworn to before me on this the 13th day of Mch 1863 —
J. M. Martin Clerk

And afterwards to wit on the 5th day of October 1863. and during the trial of said Cause the plaintiff asked the following instructions which were by said Court refused.

Instructions Stephen Henderson Pfff
v.
Henry C McPike Deft

"Refused"

In this Cause the ~~rule~~ rule of damages is the value of gold in United States treasury notes at the date of the Maturity ~~and~~ of the note. with interest at Six per cent up to the time of the rendition of the Judgment —

15 And also on the day and year aforesaid to wit on the 5th day of October 1863. the following Judgment appears of record in said Cause viz"

Judgment Stephen Henderson Plaintiff } Petition
v. } on
Henry C. McPike Defendant } Note

Now at this day said parties appear by their respective attorneys and this cause coming on to be heard and a jury being waived the cause is submitted to the Court sitting as a jury who finds for the plaintiff his debt including the damages & interest to be the sum of five hundred and seventy three dollars and fifteen cents ($573.15). It is therefore considered and adjudged by the Court that the plaintiff have and recover of the defendant five hundred and seventy three dollars and fifteen cents the debt damages and interest aforesaid with interest thereon from the date hereof at ten per cent. together with his costs and charges about this suit laid out and expended and may have therefore his execution

And afterwards to wit on Same day and year aforesaid the 5th day of October 1863. the following appears of record viz"—

Motion for new trial filed

"Stephen Henderson Plaintiff } Petition
v. } on
Henry C McPike Defendant } Note

Now at this day Said defendant Comes again by Robert A Campbell Hug Allen and S S Allen his attorneys. and files the defendants Motion for a new trial in this Cause and Said Motion Coming on to be heard after the argument of Counsel. the Same is by the Court overruled—

Which Motion is in the words and figures following viz"

Motion for new trial

"Stephen Henderson Pfff
vs
Henry C McPike deff.—

The Defendant by his attorney moves the Court to Set aside the verdict rendered in this Cause and to grant him a new trial for the

14.

Following Cases -
1st Because the Court erred in refusing the instructions asked by the Defendant -
2nd Because the finding of the Court is against the law and the evidence -

R. A. Campbell Atty
for Defts

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October Term 1864

Stephen Henderson
Defendant in Error

vs Transcript

Henry C. McPike
Plaintiff in Error

Error to Pike Circuit

~~Filed January 8. 1864~~
~~A.W. Mead~~
~~Clk~~

Filed Sept 14. 1864
A.W. Mead Clk
Transcript

$10.00/100 paid by Sct. Holliday

~~Filed January 8. Motion for stay of Execution overruled Op 219~~
Asst of Errors filed
1864 Dec 5. Argued submitted by S.J.E.
1864 December 19. Reversed & judgt here for $393.54
into of which shall come costs & expenses of said
here. Pltff in Error to pay costs of Error Cond
Costs paid

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Stephen Henderson

vs.

Henry C. McPike

For bill of exceptions in this cause it is agreed that Defendant on the 31st day of March 1862, executed a note to Plaintiff for four hundred and Eighty dollars gold borrowed of Plff by Defendant. It was stipulated by Defendant in the note that the amount should be paid in gold. The note was dated on the day aforesaid and payable thirty days after date, with 10 p/c per annum interest from date.

On this note Plaintiff instituted a suit in the Circuit Court of Pike County on the 13th day of August 1862, returnable to the Fall Term, alleging a failure on the part of the ~~Plaintiff~~ Defendant to comply with his contract to pay

Plaintiffs the aforesaid
sum in gold and asking
a judgment for damages
~~for~~ such failure.

The Defendant pleads
by way ~~of~~ of setoff a note which the
Plaintiff on the 9th day of
April 1862 had executed
to one Hedges for two
Hundred and fifty dollars
and which Hedges on the
same day had assigned
to the Defendant — Said
note was payable one day
after date with interest
at Six per cent per annum
~~from~~ from date. Said
last named note is not
negotiable and there having
been an error in the
execution, it is admitted
that the true amount of
said note should have been
One Hundred and Eighty
Six and 9/100 dollars &
that said amount was a
proper credit against
Plaintiffs demand —

The only question

in the Case is whether the judgment when rendered should be rendered for the face of the note & interest thereon, less the Hedges note or for damages arising from failure to pay gold - that is, for an amount equal to the value of gold in legal tender notes —.

On the trial the Defts asked the following instruction which was refused by the Court to wit.

"In this Cause the rule of damages is the value of gold in United States Treasury notes at the date of the maturity of the note with interest at Six per cent up to the time of the rendition of the judgment"

The refusal to give this instruction is the error Complained of and the opinion of the Supreme Court is asked upon the

1/

Case as then presented

J. B. Henderson.
Atty for Pltff.

R. A. Campbell
Atty for Deft

Stephen Henderson

vs.

Henry C. McPike

Bill of Exceptions

Filed Sept 14. 1864

A.W. Mead

Clk

Stephen Henderson
Deft in Error
vs
Henry C. McPike Pltff in Error

IN SUPREME COURT,
October TERM, 1864

AND now comes the said Pltff in Error and says that in the record and proceedings of the Court below, in the above entitled cause, there is manifest error, and for error said Pltff in Error assigns the following, to wit:

1. ~~That said Court admitted improper and illegal testimony offered by~~
2. ~~That said Court rejected proper and legal testimony offered by~~
3. ~~That the Court gave to the Jury improper and illegal instructions.~~
4. That the Court, sitting as a jury refused to give ~~to the Jury~~ proper and legal instructions offered by Pltff in Error
5. That the verdict was against the evidence.
6. That the verdict was against law.
7. That the verdict was against both law and evidence, and against the law under the evidence.
8. That the verdict was against the weight of evidence.
9. That the judgment was rendered in favor of the Deft in Error when it should have been rendered for the Pltff
10. That said Court overruled the motion for a new trial, made by

That said Court erred in rendering a judgment in said cause for a greater amount than the face of the note and the accrued interest

R. A. Campbell
Atty for Pltff in Error

And now comes the Deft in Error and for joinder in error says that there is no error in the record and proceedings of said in said cause, as assigned by said Pltff in Error

Henderson
& Dyer
for
Deft in Error

Stephen Henderson

vs

Henry C. McPike

Assignment of Error

Filed Dec 1st 1864

A. W. Mead

Clk

Stephen Henderson D. E.
vs
Henry C. McPike P. E. } Statement of Case by Pff in Error

On the 31st day of March 1862 the Pff in Error Henry C. McPike executed to the Defendant in Error Stephen Henderson his negotiable promissory note by which he promised thirty days after date to pay to said Henderson the Sum of Four Hundred and Eighty dollars with interest from date at ten percent per annum and if the interest was not paid annually it (the interest) was to become as principal and bear the Same rate of interest. In Gold. On the 9th day of April 1862 said Henderson executed and delivered his promissory note to one Wm N. Hedges for Two Hundred and Fifty dollars payable one day after date - and on the Same day Hedges for Value received assigned Said note to the Pff in Error (McPike) -

On the 13th day of August 1862 Henderson having refused to admit the note thus assigned by Hedges to McPike as a Set off against the note of McPike instituted Suit upon Said note in the Circuit Court of Pike County that being the Second Court in Said County having jurisdiction of the

cause - the Louisiana Court of Common Pleas having held its regular term on the 2d Monday in July 1862 and having jurisdiction of the case and parties) The petition filed at that time viz the 13th of August 1862 asked for judgment for only the amount of Said note with interest filed March 6th 1863.

Mc Pike in his answer, admitted the execution of the note and plead by way of Set off the note of Henderson which had been assigned to him by Hedges and made a tender of the balance due upon Said note as required by the Statute -

On the 11th of March 1863. Henderson filed his replication to Mc Pike's answer in which he claimed that there was a mistake in the execution of his note to Hedges and that the amount to which Mc Pike was entitled as an offset in the case was $186.91 and interest instead of $250.00 + interest as claimed in the answer.

Afterwards on the 13th of March 1863. the Defendant in Error Henderson filed his amended petition in Said cause in which he avers the execution + delivery of said note (as above described) and asks for judgment for one thousand dollars as damages for its non payment at Maturity which is the conclusion of his Suit for damages

At the Sept. Term 1863 the cause was tried upon the pleadings and

evidence and a judgment was rendered for the Pff below for Five Hundred & Seventy three and 15/100 dollars - for his debt & interest -

The evidence introduced tended to show that at the time of the execution of the Note that gold was at par and that at its maturity it was three or four per cent premium and at the trial it was 40 per cent premium which was allowed by the Court below as the measure of damages in the case -

The Pff in error insisted that the rule of damages (assuming that the Pff could recover a greater amount than the face of the note and interest) was the Value of Gold in the Market at the date of the Maturity of the Note - and asked the following instruction from the Court which was refused in "In this case the rule of damages is the Value of Gold in U.S. Treasury Notes at the date of the Maturity of the Note with interest at six percent up to the time of the rendition of the judgment - The refusal to give this instruction is one of the grounds of complaint -

Another point in the case will be found in the agreed case filed in this cause - and is as follows viz - Whether the judgment where

rendered should be rendered for ~~an amount~~ the face of the note & interest thereon less the Hedges note or for damages arising from failure to pay gold - that is for an amount equal to the Value of Gold in Legal tender notes -

R A Campbell
for Plaintiff in error

Stephen Henderson
D. Es.

vs

Henry C. McDike
P. Es.

Statement of Case
by Plaintiff in Error

Filed Dec 1st 1864

A. W. Mead
Clk

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Statement of Case
By Defts in Error.

On the 31st day of March 1862 the Plaintiff in error Henry C. McPike executed his ~~note~~ promissory note or obligation to Stephen Henderson the Defts. in error by which he agreed to pay or deliver to the said Henderson thirty days after the date of the ~~note~~ obligation four hundred and Eighty dollars with interest at ten per cent per annum from date thereof till paid. the ~~principal and interest~~ amount to be paid or delivered in gold. The obligation was executed for gold borrowed of Henderson by McPike on which he thus stipulated to redeem in kind.

McPike failed to comply with his contract and Henderson on the 13th day of August 1862 ~~instituted~~ (this being the first term of the Circuit Court in Pike County in which the parties resided) instituted a suit to recover damages for the breach

McPike pleaded by way of Setoff a note dated in April 1862 (April 9th) on which it is admitted

that there was due at date of note one Hundred and Eighty six and 91/100 Dollars.

At the fall Term of the Circuit Court of said County in 1863 a trial was had on ~~said note~~ the pleadings and evidence and a Judgment was rendered for the Plaintiff below for five hundred and seventy three and 15/100 Dollars for his debt and interest.

The evidence adduced tended to show that the price of gold continued to increase from the execution of the note to the time of bringing the suit and from that time to the time of rendering the Judgment.

The Plaintiff in error insisted that the true rule of damages was the value of gold in the market at the time the note matured, with six per cent on that value from the time of the breach. and, in order to present that point to the Court, asked the following instruction, viz: "In this case the rule of damages is the value of gold in United States Treasury notes at the date of the maturity

of the note with interest at six per cent up to the time of the rendition of the Judgment.

The refusal to give this instruction constitutes the only error complained of, on the trial below —. If however it is thought that the agreed case presents the question, whether such a contract can be discharged with legal tender notes, dollar for dollar, the Defendant in error urges no objection to the consideration of that question.

Henderson & Dyer
for Dept. in error

No. 2

Stephen Henderson
vs. D. E.

Henry C McKee
P. E.

Statement of
case by Deft
in Error

Filed Dec 1st 1864

A. W. Mead
Clk

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Anderson
vs.
McPike

Calculation made by the Court, to arrive at the amt. found due the plff in this cause.

McPike's note, dated Mar 31/62, (in Gold) $480.00
Int. at 10 per cent to Oct. 5th 1863 72.66
$552.66

Add 40 per ct. the premium on Gold on day of Trial 221.06
$773.72

Hedges's note - set-off

Hedges's note, dated Apl 9 '62 $186.91
Int. at 6 per ct. to Oct 5/63 16.67
203.58 = 203.58

$570.14

Amount for which the court intended to render judgment, but by error in the calculation, judgment was rendered for three dollars and one cent more than that amt. being for $573.15

Stephen Henderson
D. E.

vs.

Henry C. McPike
P. E.

The note upon which this action was founded is a negotiable promisory note bearing a fixed rate of interest and is merely a "promise to pay" a Specified Sum of Money in gold and is not a contract to deliver gold as a commodity or article of merchandize - and the Court below erred in rendering a judgment for an amount greater than the face of the note and the interest that had accrued at the day of trial after deducting the ascertained amount of the Set off -

The terms of the agreement between the parties contemplate and provide for the contingency that the note might not be paid at maturity and it is expressly Stipulated in the body of the instrument itself that the principal is to bear interest at the rate of ten per cent per annum, and if the interest be not paid annually to become as principal and bear the Same rate of interest

thus agreeing upon and fixing the damages in the event of a failure to pay promptly at the maturity of the note –

Why fix the amount and rate of damages resulting from a failure to pay, if it was in contemplation of either party, that other or greater damages were to be demanded or paid?

The Court will not allow a party to travel outside of his contract in the assessment of damages unless such extrinsic damages and the risk of [redacted] a non performance their being sustained in case of a non performance of the contract was in contemplation of the parties at the time of its being entered into –

Chipman on Contracts p. 1220-3

In this case a ~~part~~ possible failure to perform was foreseen by the parties and provided for in the note itself –

The judgment should have been for the amount found due upon the note in money –

Whether that judgment could have been discharged with United States Treasury Notes under the act of Congress of Feby. 25 1862 Making United States Treasury Notes

a legal tender for all debts public or private - was not a question before the Court below in the trial of this cause, and it was not called upon to decide it - Such a question could only arise and be settled between the Officer having charge of an execution issued upon the judgment and the Defendant -

Judgment is rendered against the Defendant for failure to pay gold and damages is assessed against him for the breach equal to the difference in the Speculative value between legal tender notes and gold coin at the day of trial - Say forty percent as in this case - an execution is issued upon the judgment and is placed in the hands of the Sheriff who endorses upon it the date at which it came into his hands - at the time he receives the execution he has in his hands money in gold belonging to the Defendant do not the execution at once paid off and satisfied? Can the Officer return the gold to the Defendant and demand that the execution be satisfied in legal tender notes? The laws of Congress and of

of this State make no distinction in the Value of money whether it be gold coin or such other money as has been made a legal tender for debts by laws constitutionally enacted—

Thus the defendant is made to pay by the judgment of the Court the Speculative value of gold for his failure to pay according to agreement as damages resulting to the other party and the law requires the Sheriff to return the execution satisfied with the gold of the defendant which he had in his hands when the execution came into his hands and the Courts can afford him no relief in the case for the action of the Sheriff would be legal and proper

Assuming that the note was a contract "to deliver gold as a chattel the Court below erred in refusing the instruction asked by the defendant

"In this case the rule of damages is the Value of gold in United States Treasury notes at the date of the maturity of the note with interest at Six per cent up to the time of the rendition of the judgment"

The true rule of damages in such a case, is the value of the article at the time of the breach, or when it should have been delivered- and this whether the price has been paid in advance or not-

Sedgwick on Dam. p. 273 et Seq & note
White's Exr. vs. Saulsbury et al 33rd Mo. R. p. 150-
Walker vs Borland et al 21st Mo. R. p. 289
Hunt vs. Dillon 21st Mo R. p. 294
Smith et al vs Dunlap - and authorities therein cited 12th Ill. R. p. 184
2nd Kents Com. 6th Ed. p. 480 et Seq.
3rd ~~Parsons on Contracts~~

In the case of Walker & others vs Borland 21st Mo. R. p. 289 Judge Leonard in delivering the opinion of the Court Says- "In our own State it is believed the practice has been to estimate the value at the time the injury was committed and to allow interest to the time of the trial and we see no reason to disturb it and think it the correct rule"-

In the case of Hunt vs Dillon same Volume the opinion in the case of Walker et al vs Borland as to the measure of damages was reaffirmed=

So also in the case of White's Exr vs Saulsbury et al 33rd Mo R. p. 150-

Judge Snyder in delivering the opinion of the Court says- "When the Contract is still existing and suit is brought upon it- as in this case- the measure of damage is not the price or Value of the thing paid by the Plaintiff but the Market Value of the chattle to be delivered, at the place of delivery and time of the breach"=

Where a note is given with a promise to pay one thousand dollars at a certain time in flour or gold then this sum is to be paid either in flour or gold- or other lawful money at the election of the payor-

2nd Parsons on Contracts p. 490 et Seq. Note

The note in this case was payable in gold and the Payor having the right to pay in gold or other lawful money there was no breach of the contract in failing to pay gold so as to entitle the Plaintiff to recover damages beyond the rate of interest agreed upon in

The Record in this case Shows that the Plff instituted Suit upon the note on the 15th of Aug 1862 (the note having matured May 1st 1862) and asked for a judgment for the face of the note + interest- The Defendants answer admitted the Plff's case but asked to

have the amount of Pff's note due to him set off against the note sued on - In his replication filed March 11th 1863 the Pff - admitted the set off in part and said the amount deft was entitled to set off against the note was less than claimed by the defendant - On the 13th of March 1863 he filed an amended petition in which averred the execution & delivery of the note and asked for a judgment for one thousand dollars damages for its non payment at maturity - This was the beginning of his suit for damages nearly a year after his right of action accrued - and shows that the suit was not instituted within a reasonable time - the evidence showing that the speculative price of gold had continued to increase during all this time -

The law will not tolerate the Pff's deriving benefit from delays of litigation caused by himself

Sedgwick on Dam. p. 265 -

Smith & Allen & R A Campbell for Plaintiff in Error

Stephen Henderson
D. E.

vs

Henry C. McPike
P. E.

Authorities for
Plff. in Error
~~Smith S. Allen &~~
R. A. Campbell
Atty -

Filed Dec 1st 1864

A. W. Mead
Clk

(91)

Stephen Henderson.
D.E.
vs
Henry C. McPike
P.E.

The act making United States notes a legal tender for private debts, became a law February 25 1862. This act did not prohibit the buying and selling of gold nor did it prevent the receiving of gold deposits nor borrowing and agreeing to pay back in gold. It in no manner interfered with dealings or speculations in coin. Such a law was subsequently passed in 1864 but was found injurious and immediately repealed.

This was a contract whatever its forme to pay or deliver in gold and a failure to comply with the contract entitles the Plaintiff to a Judgment for damages arising from the breach. The Judgment being rendered after the passage of the law, can be discharged in United States notes, therefore the judgment should be for ~~the~~ such amount as will repair the damages sustained.

2. The obligation was given

for four hundred and Eighty dollars of gold Coin received by the Plaintiff in error, which he agrees to pay back in thirty days with interest at 10 per cent.

In Contracts for the delivery of articles sold, when the money has not been paid, the measure of damages is the difference between the Contract price and the value of the article when it should have been delivered, but where the purchaser has paid the price in advance or is deprived of the use of his money or property, he is entitled to the rise in the market value of the article up to the time of trial.

The reason of the difference is obvious. In the former case the Plaintiff has the means to supply himself with the needed article, when the breach occurs. In the latter, he cannot be presumed to have the means to supply himself

Sedgwick Meas. Dam. pp 260, 261, 262
et. Seq.
2 Burr 1010 —
Clark vs Pinney 7 Cowen 681-9
Shepherd vs Johnson 2 East 211

McArthur vs Seaforth 2 Taunt. 257
Downs vs Back. 1 Starkie 254
Harrison vs Harrison 1 Car. & P. 412
Leigh vs Patterson 8 Taunt. 540.
Cortelyou vs Lansing 2 Caines Cas 200
West vs Wentworth 3 Cowen 82

3 If the suit be brought in a reasonable time after breach the Plaintiff may recover according to the highest price at any time between the period of delivery and the day of trial.

Chitty Contracts p 445 note 2
Williamson vs Dillon 1 Har. & Gill. 444
Shepard vs Hampton 3 Wheat. 200-204
Marshall vs Campbell 1 Yeates 36.
Lewis vs Carradan 1 do 37
Conv. Bank vs Rortright 22 Hendell 348
Clark vs Penney 7 Cowen 681
Gray vs Portland Bank 3 Mass. 390.
Chitty on Contracts 871 (a)

This suit was brought to the first Court after breach and prosecuted to Judgment at the earliest practicable period —.

Henderson & Dyer
for Deft. in Error

No. 2.

C

Stephen Henderson
P.E.

vs.

Henry C. McPike
P.E.

Authorities

Filed Dec 1st 1864

A. W. Mead
Clk

(4)

Stephen Henderson Res.

vs

Henry C. McPike Pltff in Error.

This was a suit on a negotiable promissory note dated the 31st of March 1862 payable by McPike to Henderson thirty days after its date for four hundred and eighty dollars in gold, with interest at ten per cent per annum from date.

McPike pleaded as a setoff a note (which he held by assignment from one Hedges the payee) dated April 9th 1862 made by Henderson, on which there was due one day after its date one hundred and eighty six dollars and ninety [redacted] cents with six per cent interest. The case was tried by the Court without a jury. The Court computed the interest on the note sued on, and added to the sum of the principal and interest added 40 per cent thereon for the supposed difference between the value of gold coin and (United States) treasury notes, and from the aggregate deducted the amount of principal and

interest due on the note pleaded as a setoff, and rendered judgment for the Plaintiff for the remainder of 73. 15/100 dollars. And the defendant below has brought the case to this Court by writ of Error.—

The theory upon which the circuit Court proceeded in this case was that it was not only the right of the defendant to discharge the judgment to be rendered against him by the payment of treasury notes but that he would avail himself of that right; and that as treasury notes were depreciated in the market below the value of gold coin, the plaintiff was entitled to ~~recover~~ such sum in the depreciated currency as would procure the amount of gold the defendant by his contract had promised to pay. The theory has a fair look but is without any legal support. The Error consists in attributing to money a marketable or Commercial value, and a liability to the fluctuations in price to which other property by the accidents of trade is subject; and in supposing that instead of the value (of money) being a thing fixed and established by law it was an open question to be determined by the Courts in every case on the testimony of witnesses. Money is the universal medium or

common standard by a comparison with which the value of all merchandize may be ascertained, or it is a sign which represents the respective values of all commodities (1 Bl. Com. 276) and as such medium has no marketable value, but possesses such standard value as the law making power has assigned to it.

the Congress of the United States possesses the exclusive power under the Constitution of coining money and of regulating the value thereof; and if it be conceded that the act of the 25th of Feby: 1862 declaring treasury notes money and making them a legal tender in payment of debts is within the constitutional power conferred upon Congress then treasury notes stand upon the same footing as gold coin; each is a legal tender, and one no more than the other. Before the law they are equals in value, and the court can suffer no averment nor hear any proof to the contrary.

The two mediums of payment being in legal contemplation of the same value the law to be consistent with itself must hold that no ~~damage~~ (injury) results from the breach of a contract to pay in the one medium if payment be offered in the other. Such breach is damnum absque injuria.

On the other hand if treasury notes be not money and legal tender the judgment of the Circuit Court is equally erroneous, because in that case, although the judgment was for recovered is excessive, made so upon the notion that it would be discharged in treasury notes at par, and was for a sum graduated by the supposed marketable value of treasury notes, the plaintiff has the right to refuse such notes no matter in what quantity offered, and to demand payment of the whole sum recovered, no matter in what excess in coin.

In no light therefore in which the subject may be viewed can the judgment of the court below be maintained.

It is the well settled law that in actions on promissory notes the measure of recovery is the sum promised with interest, except in cases where by statute special damages are given in lieu of interest. The case at bar forms no exception to the general rule. With the concurrence of the other Judges the judgment of the Circuit Court is reversed. And there being no dispute as to the facts in the case this Court now proceeds to render such judgment ~~in the case~~ as the Court below ought to have rendered, and orders that judgment be entered for the ~~plaintiff~~ respondent for the ~~balance of the~~ amount of the principal and interest of the note sued on after deducting therefrom the sum of the principal and interest of the note pleaded as a set off - and for costs in the lower court, and that the pltff in Error recover costs in this Court.—

The other Judges Concur

John D. S. Dryden

2

Henderson
vs
McPike

Opinion of court
by Dryden

Pl. off. debt [illegible] $610.6
Set off [illegible] 217.12
Judgt for $393.52

Filed Dec 19. 1864
A. W. Mead Jr.

Reversed & judgt here

(8)