FAUTNTLEROY v. HANNIBAL.

Case No. 4,692.
{5 Dill. 219.}[1]

Circuit Court, E. D. Missouri. 1879.[2]

BONDS—COUPONS—JUDGMENT—INTEREST.

On matured bonds and coupons of a Missouri municipal corporation, interest is allowable upon bonds payable in New York calling for ten per cent until payment, in accordance with the terms of the contract at ten per cent, and under the Missouri statute so much of the judgment as relates to the principal of the bonds and accrued interest thereon must continue to bear interest at that rate; upon coupons payable in New York and expressing no rate of interest, the statute of Missouri governs, and only six per cent is allowable, and so much of the judgment as relates to such coupons and accrued interest thereon must continue to bear that rate of interest.

This is an action on matured bonds and attached interest coupons, issued by the city of Hannibal, in the state of Missouri, of the following form:

"No. 6. State of Missouri. $1,000. Bond of the City of Hannibal, Issued to Pay Calls on Subscription for Stock in the Pike County Railroad, Illinois. Twenty years after date the city of Hannibal promises to pay to the order of A. O. Nash, auditor of said city, or bearer, at the American Exchange Bank, New York, one thousand dollars, for value received, without defalcation, with interest on the same at the rate of ten per cent per annum, and payable semi-annually at the same place—that is to say, fifty dollars on the 1st day of October, and a like sum on the 1st day of April, in each year—upon the presentation of the coupons severally hereto annexed, until the payment is well and truly made of the said principal sum of one thousand dollars. In witness whereof, I, the mayor of said city, hereto subscribe my name and cause the seal of said city to be affixed, and the auditor of the said city countersigned the same, at the city aforesaid, this 1st day of April, A. D. 1858. (Signed.) Geo. W. Shields, Mayor. (Signed.) A. O. Nash, Auditor."

Coupon.—"$50. Cashier of the American Exchange Bank, New York, pay the bearer fifty dollars on the 1st day of October, 1877, for one-half year's interest on bond issued by the city of Hannibal in aid of the construction of the Pike County Railroad, Illinois. No. 39, B. 6. (Signed.) A. O. Nash, Auditor."

After trial on the merits the court decided for the plaintiff,[2] and in liquidating the amount of the judgment the questions arose how interest should be calculated upon the securities, and what rate of interest the judgment should bear. The rate of interest in New York, where the instruments sued on are by their terms made payable, is seven per cent. The statute of Missouri, the state where the contract was entered into, and in which the suit is brought, contains, inter alia, the following provisions as to interest (1 Wag. St. p. 782): "Creditors shall be allowed to receive interest at the rate of six per cent per annum, when no other rate is agreed upon, for all moneys after they become due and payable,

on written contracts." "The parties may agree, in writing, for the payment of interest not exceeding ten per cent per annum, on money due or to become due upon any contract." "Interest shall be allowed on all money due upon any judgment or order of any court from the day of rendering the same until satisfaction be made by payment accord, or sale of property; all of such judgments and orders for money upon contracts bearing more than six per cent interest shall bear the same interest borne by such contracts, and all other judgments and orders for money shall bear six per centum per annum until satisfaction made as aforesaid." Plaintiff claimed in argument:

1. Ten per cent on the principal of the bonds up to liquidation.

2. Ten per cent on so much of the judgment as related to the principal of the bonds and accrued interest thereon since maturity.

3. Seven per cent on the coupons to the date of judgment.

4. Seven per cent on so much of the judgment as related to the coupons and accrued interest thereon since maturity.

As to the principal, and also as to the portion of the judgment based on the principal and interest accrued thereon since maturity, under the Missouri statutes the terms of the contract expressed in the bonds govern.

As to the coupons:

1. Interest is allowable from maturity. Gelpcke v. Dubuque, 1 Wall. [68 U. S.] 206; Aurora v. West 7 Wall. [74 U. S.] 82; Town of Genoa v. Woodruff, 92 U. S. 502.

2. The law of the place of payment governs, viz., New York. The contract was made by the parties with reference to place of performance, and the law of that place controls. Neither the law of the place where the contract was made, nor where now sought to be enforced, applies Making the coupons payable in New York was, in law, equivalent to saying that they should bear seven per cent after maturity; if this be so, the portion of the judgment relating thereto should continue to bear the same rate. Bank of Louisville v. Young, 37 Mo. 407; 2 Pars. Cont 585; Gelpcke v. Dubuque, 1 Wall. [68 U. S.] 206; Miller v. Tiffany, Id. 310; Goddard v, Foster, 17 Wall. [84 U. S.] 143; City of Jeffersonville v. Patterson, 26 Ind. 16.

The United States supreme court in Gelpcke v. Dubuque (per Clifford, J.), says: "Municipal bonds, with coupons payable to bearer, having by universal usage and consent all the qualities of commercial paper, a party recovering on coupons is entitled to the amount of them, with interest and exchange at the place where by their terms they were made payable."

3. The cases of Rogers v. Lee Co. {Case No. 12,013} and Cromwell v. Sac Co., 96 U. S. 51, do not control this case, because based on Iowa statutes, as follows: "The rate of interest shall be six cents on the hundred by the year on money due by express contract, unless a different rate be expressed in writing." "Parties may agree, in writing, for the payment of interest not exceeding ten cents on the hundred by the year." "Interest shall be allowed on all money due on judgments and decrees at the rate of six per cent per annum, unless a different rate is fixed by the contract on which the judgment or decree is rendered, in which case the judgment or decree shall draw interest at the rate expressed in the contract, but no judgment or decree shall draw more than ten per cent per annum, which rate must be expressed in the judgment or decree." Revision Iowa, 1860, §§ 1787, 1788, 1789.

In the Lee County Case interest was allowed on the coupons at seven per cent to liquidation, and the rate was lowered to six when judgment was entered. Under the Missouri statute, supra, the judgment continues to bear the same interest borne by such contracts.

The Sac County Case related to coupons by their terms expressly made payable either in New York or in the state of Iowa, Hence the United States supreme court applied thereto the statute law of Iowa, which was also lex fori. The decision is to be limited in its application to the very case in hand. It cannot be extended to this case to the subversion of the well established principles of commercial law.

Grant & Grant and Joseph Shippen, for plaintiff.

Krum & Krum, for defendant.

Before DILLON, Circuit Judge, and TREAT, District Judge.

DILLON, Circuit Judge. The Missouri statutes on the subject of interest must govern. The contracts were made in this state and are sought to be enforced here. No substantial difference as to the points here involved exists between the statutes of Missouri and those of Iowa, which have received judicial construction, both by the United States circuit court for Iowa and by the United States supreme court. Applying those rulings to this case, we hold that the plaintiff is entitled to ten per cent interest upon the principal of his bonds from their maturity to date of judgment, and that thereafter so much of the judgment as relates thereto must continue to bear the same rate. This is because the Missouri statute allowed the parties to so contract, and they by the terms of the bonds did so contract. And we further hold that the plaintiff is entitled to but six per cent upon the coupons, as there is no rate of interest expressed therein, and that thereafter the portion of the judgment relating to the coupons and accrued interest thereon must continue to bear the same rate. Rogers v. Lee Co. {Case No. 12,013}; Cromwell v. Sac Co., 96 U. S. 51.

Let judgment be entered accordingly.

Judgment accordingly.

{NOTE. On writ of error by defendant the judgment at the trial on the merits was affirmed. Hannibal v. Fauntleroy, 105 U. S. 408.}

[1] {Reported by Hon. John F. Dillon, Circuit Judge, and here reprinted by permission.}

[2] {Affirmed in Hannibal v. Fauntleroy, 105 U. S. 408.}