Rice *v.* Edwards.

The case is stated in the opinion.

Mr. Chief Justice Waite delivered the opinion of the court.

This was a suit to recover damages for the careless and negligent shooting and wounding of Giblin, the plaintiff below, by McIntyre, the defendant. On the trial the court charged the jury that in computing the damages they might take into consideration "a fair compensation for the physical and mental suffering caused by the injury," and the only question submitted to us now is whether this charge was erroneous because the words "and mental" were included.

We think, with the court below, that the effect of this instruction was no more than to allow the jury to give compensation for the personal suffering of the plaintiff caused by the injury, and that in this there was no error.

Judgment affirmed.

Mr. Benjamin Sheeke and *Mr. S. A. Merritt* for plaintiff in error.
Mr. E. D. Hoge for defendant in error.

RICE *v.* EDWARDS.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICT OF MINNESOTA.

No. 222. October Term, 1879. — Decided April 5, 1880.

A decree in equity will not be reversed for an immaterial departure from technical rules when no harm has been done.

If a bond contains a provision that on default of the payment of interest the principal shall become due at the election of the holder, and such default takes place, the commencement of suit to collect the principal and interest and the production of the bond at the trial are sufficient proof of such election.

The case is stated in the opinion.

Mr. Chief Justice Waite delivered the opinion of the court.

This case shows that on the first day of May, 1874, Henry M. Rice applied to the Equitable Trust Company, of New London, Conn., for a loan of twenty-five thousand dollars for five years, with interest at the rate of ten per cent per annum. His application resulted in his executing to the company twenty-five bonds of one thousand dollars each, payable five years after date, with interest semiannually at the rate of seven per cent per annum. The difference between seven and ten per cent interest was taken in advance,

the company deducting fifteen per cent from the face of the loan when paying over the money.

The bonds contained a provision to the effect that if default should be made in the payment of any one of the instalments of interest as they fell due, and the default should continue for ten days, the principal of the bonds should become due, at the election of the holders, without notice. Payment was secured by a deed of trust from Rice and his wife to Edwards, the trustee.

Default was made in the payment of an instalment of interest falling due November 1, 1875, and in another due May 1, 1876. Thereupon Edwards, the trustee, on the 9th of September, 1876, filed a bill in equity to foreclose the trust, alleging an election by the holders of the bonds to consider the principal sum due, as well as the interest. Rice and wife appeared and filed what is termed a plea to so much of the bill as avers that election was duly made that the principal should be due and payable, in which they denied all the allegations of the bill in that behalf. An issue was made on the averments in this plea, and on the 16th of July, 1877, the court below decided that the commencement of the suit, and the production of the bonds at the hearing, was sufficient evidence of the election in the absence of any proof that the owners of the bonds did not sustain the trustee in the course he had pursued. The cause was then at once referred to a master to ascertain the amount due. On the 6th of August a report was made, finding due at that date $\$29{,}210\frac{22}{100}$ principal and interest, and on the same day the court entered the usual decree of foreclosure and sale for that amount. On the 20th of August Rice appeared, by his solicitors, and moved the court to open the decree in respect to the amount due, and to refer the cause again to a master to state the account on the basis of deducting a proper sum for the interest taken in advance. Upon this petition an order was made on the master to compute, ascertain and report the amount which should be deducted for this cause. The master heard the parties and reported that a deduction of $1120.60 should be made for unearned interest paid in advance, but the court on consideration, refused to modify the decree as originally entered. Rice and his wife thereupon took this appeal.

The errors assigned are: 1, That, upon overruling the plea, a decree was entered without assigning the defendant to answer the bill, as provided in equity rule 34; 2, that there was no proof that any election had been made, before the suit was brought, to con-

sider the principal due; and, 3, that the decree was not modified by deducting therefrom $1120.60.

As to the first error assigned, it is sufficient to say that no application was made for time to answer, and it nowhere appears that the failure to conform to the rule has resulted in harm to the appellants. In *Allis* v. *Insurance Co.*, 97 U. S. 144, we said we would not reverse a decree for an immaterial departure from technical rules when we could see that no harm had been done. Here it is not pretended that the appellants have any other defence to the action than such as they set up in their plea, or presented to the court in their application for a modification of the decree. Upon both these defences they were fully heard, and the case is now here for review, with a sufficient record to enable us to pass upon all the questions presented. Under such circumstances it would be clearly wrong to reverse the decree because time was not given to file a formal answer, setting up what already appeared in the case.

We agree with the court below that the election by the bondholders to consider the principal sum due was sufficiently proven by the bringing of the suit by the trustee and the production of the bonds at the hearing.

The laws of Minnesota put no limit on the rate or amount of interest for which the parties may contract in writing. The contract in this case was to pay the fifteen per cent in advance, and the continuance of the loan for the five years was made dependent on the prompt payment of the semiannual interest at the rate of seven per cent. *Decree affirmed.*

Mr. M. Lamphrey and *Mr. C. K. Davis* for appellants. *Mr. H. R. Bigelow* for appellee.

O'REILLY *v.* EDRINGTON.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF MISSISSIPPI.

No. 246. October Term, 1879. — Decided April 19, 1880.

The agreement of compromise between the parties which is referred to in the opinion was competent evidence and properly received as such, although not set forth and relied upon in the pleadings.

The case is stated in the opinion.

Mr. Chief Justice Waite delivered the opinion of the court.

O'Reilly, as assignee in bankruptcy of Edrington, Jr., and Steele,