1823.

Sneed v. Wister.

and the owner must be left to his remedy against the corporation for adjusting the correct amount. But if it be intended to obtain the decision of this Court, whether one man's lots can be legally sold for another man's debts, we cannot perceive that it will admit of a question; nor can it ever occur, if the course be pursued which is marked out by this decision.

The tenth point made in the cause, is one which goes to contest the correctness of the decision below, on a general principle of equity; but, understanding this question, as well as that which arises upon the ground of the complainant's supposed remedy at law, to be withdrawn, we shall decline noticing them.

Decree affirmed, with costs.

---

[Pleading. Local Law.]

Sneed and others, *Plaintiffs in Error*,

v.

Wister and others, *Defendants in Error*.

The Act of Assembly of Kentucky, of the 7th of February, 1812, "giving interest on judgments for damages, in certain cases," applies as well to cases depending in the Circuit Courts of the Union, as to proceedings in similar cases in the State Courts.

The party is as well entitled to interest in an action on an appeal bond, as if he were to proceed on the judgment, if the judgment be on a contract for the payment of money. He is entitled to interest from the rendition of the original judgment.

1823.

Sneed v. Wister.

Oyer is not demandable of a record; nor, in an action upon a bond for performance of covenants in another deed, can oyer of such deed be craved; for the defendant, and not the plaintiff, must show it, with a profert of it, or an excuse for the omission.

If oyer be improperly demanded, the defect is aided on a general demurrer; but it is fatal to the plea, where it is set down as a cause of demurrer.

*Nil debet* is an improper plea to an action of debt upon a specialty or deed, where it is the foundation of the action.

ERROR to the Circuit Court of Kentucky. This was an action of debt, brought in the Circuit Court for the District of Kentucky, by the defendants in error, against the plaintiffs, upon a bond in the penalty of 4000 dollars, with condition, that the said A. Sneed should prosecute with effect his appeal from a judgment of the Franklin Circuit Court, pronounced in a suit wherein the said Wister and others were plaintiffs, and the said A. Sneed was defendant, and should well and truly pay to the said obligees all such damages and costs as should be awarded against him, in case the said judgment should be affirmed in whole or in part, or the appeal should be dismissed or discontinued.

The averments in the declaration are, that the said A. Sneed did not prosecute his said appeal with effect, but that, afterwards, at a certain term of the Court of Appeals, the said judgment was affirmed, and judgment rendered in favour of the said plaintiffs, against the said defendant, A. Sneed, for damages at the rate of ten per cent. on the amount of the said judgment, to wit, on the sum of 1895 dollars $13\frac{1}{2}$ cents, as by the records of the said Court of Appeals would

1823.

Sneed v. Wister.

appear. And, further, that the said judgment, rendered by the said Franklin Circuit Court, was for 1895 dollars 13½ cents damages, and dollars costs, as would appear by the records of the said Court. The declaration then avers, that the said A. Sneed hath not paid to the said plaintiffs the said damages and costs aforesaid, or either of them, whereby action accrued.

To this declaration, the defendants, after demanding oyer of the bond, and condition thereof, in the declaration mentioned, and also of the judgment of the Court of Appeals, therein proffered, pleads in bar of the action: 1. That by the judgment and mandate of the said Court of Appeals, the said cause was remanded to the Circuit Court of Franklin, where the judgment of the said Court of Appeals, according to the mandate, was entered up as the judgment of the said Court of Franklin; and that after the said judgment was so entered, viz. on the 19th of August, 1820, in the clerk's office of the said Court, the said A. Sneed, according to the laws of Kentucky, did replevy the said sum in the declaration mentioned, by acknowledging recognisances, called replevin bonds, before the said clerk, together with Landon Sneed, his surety in said recognisances for the said sums of money, damages and costs, in the declaration mentioned, to be paid in one year from the date thereof; the said clerk having lawful authority to take said replevin bonds, having by law the force of judgments, and then remaining in the said Court in full force, not quashed, &c. 2. The second plea is *nil debet.*

1823.

Sneed v. Wister.

To these pleas the plaintiffs demurred, and assigned for cause of demurrer, to the first, that it contains a prayer of oyer of records, of which profert was not made, and of which the defendants had no right to oyer; and further, that the said plea is defective, in not setting forth where the replevin bond pleaded was executed, that the Court might judge whether there was any authority to take it.

The demurrers being joined, the Court below gave judgment in favour of the plaintiffs, and awarded a writ of inquiry to assess the damages to which they were entitled. On this inquiry, the defendants' counsel moved the Court to instruct the jury, 1. That the damages of 10 per cent. on affirmance, cannot be given, because not within the breaches assigned; and, 2. That they ought not to allow interest on the damages in the original judgment, for any period before affirmance.

These instructions the Court refused to give; but did, upon the motion of the counsel for the plaintiffs, instruct the jury, that the act of Assembly of Kentucky, of the 7th of February, 1812, "giving interest on judgments for damages in certain cases," applies to cases depending in this Court, in actions on appeal bonds, as much as to proceedings in similar cases in the State Courts. That the party is as well entitled to interest in an action on the appeal bond, as if he were to proceed on the judgment at law; and that, by law, the plaintiff is entitled to interest on the amount of his judgment, from the time it was rendered in the Franklin Circuit Court.

1823.
Sneed v. Wister.

Judgment being rendered in favour of the plaintiffs below, for the damages assessed by the jury, a writ of error was sued out by the defendants, and the cause brought before this Court for revision.

*March 7th.* The cause was argued by Mr. *Talbot*, for the plaintiffs in error, and by Mr. *M. B. Hardin*, for the defendants in error.[a]

*March 14th.* Mr. Justice WASHINGTON delivered the opinion of the Court; and, after stating the case, proceeded as follows:

Whether the replevin bond entered into by A. Sneed, in the clerk's office of the Franklin Circuit Court, could be pleaded in bar of the action on the appeal bond, is a question which this Court would feel no hesitation in deciding, could we have succeeded in our efforts to obtain the act or acts of the Kentucky Legislature which authorized the giving such bonds. The same reason prevents this Court from giving an opinion as to the alleged insufficiency of the first plea, in not setting forth where the replevin bond, so pleaded, was executed, that the Court might judge whether there was any authority for taking the same. If the cause turned exclusively upon those points, we should deem a continuance of it proper, until the counsel could have an opportunity of furnishing the Court with those laws. This, we think, is not the case; being all of opinion, that, for the other cause of demurrer

a The latter cited 1 *Chitty's Plead.* 302.

assigned to the first plea, the judgment of the Court below, upon that plea, was correct. In this case, no profert was made, in the declaration, of the records therein mentioned, nor would it have been proper to do so. And even if a profert be unnecessarily, or improperly made, still, the defendant is not entitled to demand oyer of the instrument, but is bound to plead without it. We take the law to be, that oyer is not demandable of a record; nor in an action upon a bond, for performance of covenants in another deed, can oyer of such deed be craved, but the defendant, and not the plaintiff, must show it, or the counterpart, with a profert of it, or an excuse for the omission. If oyer be improperly demanded, and the instrument be stated upon it, although the defect in the plea would be aided on a general demurrer, it is, nevertheless, fatal to the plea, where it is set forth as a cause of demurrer. The whole of this doctrine is laid down in 1 *Chitty's Plead.* 302. third Am. ed.

As to the plea of *nil debet*, to which there is a demurrer, it is clearly bad, no principle of law being better settled, than that this is an improper plea to an action of debt upon a specialty or deed, where it is the foundation of the action.

This brings the Court to the consideration of the instructions given to the jury upon the application of the plaintiffs' counsel; and we are of opinion, that the act referred to was strictly applicable to this case, in like manner as it would have been had this action been brought in a State Court; and that, according to the clear expressions

1823.

Sneed v. Wister.

of that act, the plaintiffs were entitled to legal interest on the damages recovered in the Franklin Circuit Court, from the time of the rendition of that judgment, since it fully appeared, by the record of the Court of Appeals, that the judgment of the Franklin Circuit Court was rendered on a contract to pay money. The act declares, in substance, that every judgment rendered after the passage of the act, founded upon contract sealed or unsealed, expressed or implied, for the payment of money, &c. which should be delayed in the execution, by proceedings on the part of the defendant, by injunction, writ of error, &c. with a supersedeas, or an appeal to the Court of Appeals, should, in the event of the judgment being affirmed, bear legal interest from the rendition of the judgment, &c. The last part of the section, which declares it to be the duty of the clerk of the Court in which the judgment was rendered, to endorse on the execution, that the same is to bear legal interest until paid, is strictly applicable to the remedy, and not to the right. The latter is given by the preceding parts of the act; but it can only be enforced where the plaintiff proceeds by execution, by virtue of the endorsement on that process, which it is the duty of the clerk to make.

The Court is, also, of opinion, that the Court below was right in refusing to give the first instruction asked for by the defendants' counsel, inasmuch as the breaches assigned do, in our apprehension, manifestly embrace the 10 per cent.

damages given upon affirmance by the Court of Appeals. And if the above opinion, in respect to the interest to which the plaintiff was entitled, be correct, it follows, that the Court below was right in refusing to give the second instruction asked for by the defendants' counsel.

1823.

Hugh v. Higgs.

Judgment affirmed, with costs.

---

[Practice.]

HUGH, *Plaintiff in Error*,
v.
HIGGS and Wife, *Defendants in Error*.

No action at law will lie on the decretal order of a Court of Equity.

ERROR to the Circuit Court for the District of Columbia.

This cause was argued by Mr. *Key*, for the plaintiff in error,[a] and by Mr. *Jones*, for the defendants in error. *March 6th.*

Mr. Chief Justice MARSHALL delivered the opinion of the Court. This is an action on the case, brought to recover the money which the plaintiff in error had been decreed by a Court of Chancery to pay to the defendants in error. The defendant in the Court below contended, that an *March 14th.*

[a] He cited Carpenter v. Thornton, 3 *Barnw. & Ald.* 52.