

This, in theory at least, is a material difference, and it may be that the same jury, on the same evidence, acting on this rule, would find the defendant was a dealer in malt liquors, as alleged in this civil action, and refuse to do so in a criminal one. Therefore the United States is not estopped, by the verdict in the criminal action, to allege and prove in this one that the defendant was a wholesale dealer in malt liquors.

The demurrer to the defense is sustained.

SHERWOOD v. MOORE.¹

(Circuit Court, N. D. Georgia. February 25, 1888.)

INTEREST—RATE ON PROMISSORY NOTE AFTER MATURITY.

Where a promissory note contains a promise to pay the principal, with interest from date at a conventional rate in excess of that established by law, in the absence of contract such conventional rate will not extend beyond the maturity of the note, unless the terms of the note itself expressly so provide.

J. D. Conyers and Broyles & Johnston, for defendant.
Mynatt & Carter, for plaintiff.

NEWMAN, J. After a verdict had been directed in this case, the question was informally raised and discussed as to the rate of interest the note, which was the foundation of the suit, bore after maturity. The language of the note, after the usual promise to pay the principal, is "with interest from this date at the rate of eight per cent. per annum, payable as per five interest notes hereto attached." The interest notes alluded to covered interest to the maturity of the note. In Georgia, where this note was executed and is payable, the ordinary legal rate of interest is 7 per cent., but a higher rate may be stipulated for by contract in writing, not to exceed 8 per cent. per annum. It may be considered as settled, I think, in the federal courts, controlled as they are by the decisions of the supreme court of the United States, that, if a conventional rate of interest higher than the ordinary legal rate is stated in a promissory note, such higher rate will not be allowed beyond the maturity of the paper, unless the terms of the instrument itself extend it beyond maturity. *Brewster v. Wakefield*, 22 How. 118; *Burnhisel v. Firman*, 22 Wall. 170; *Holden v. Trust Co.*, 100 U. S. 72. There is a qualification, however, to this ruling by the supreme court; namely, that the local law of the state will control. It is claimed by counsel for the plaintiff that the decisions of the supreme court of this state have established a different rule in Georgia, and some decisions have been cited in support of that position. The first case cited is that of *Ware v. Bank*, 59 Ga. 840. I have been unable to see anything in that decision controlling here. The only point decided with reference to interest is that the holder of the

¹ Reported by W. A. Wimbish, Esq., of the Atlanta bar.

draft in that case could collect the same rate of interest that the acceptor might have collected. Two other cases are cited and relied upon, namely, *Cauthen v. Bank*, 68 Ga. 287, and *Daniel v. Gibson*, 72 Ga. 367. In both of these cases the note provided for a conventional rate of interest (in the first case 12 per cent, and in the latter case 15 per cent.) after maturity; and the question before the court in both cases was whether the judgment should bear the rate of interest provided in the contract, and it was decided in the affirmative. That is to say, it was held in those two cases that, where the contract provided for a conventional rate of interest after the maturity of the paper, the judgment should bear the same rate. The question here is, where a contract only expressly provides for a conventional rate of interest higher than the ordinary rate to the maturity of the paper, will it be extended by implication beyond its terms? A very different question, I think. Some stress has been laid in argument upon section 2054, Code Ga., the language of which section is, "All judgments in this state bear lawful interest upon amount recovered;" the language of the original act of 1845, (Cobb, Dig. 394,) from which it is said this section was codified in part; and the reasoning of the court in 72 Ga., *supra*, in reference thereto. The point made, in brief, is, under these statutes, that judgments in Georgia bear the contract rate of interest. It is unnecessary, I think, to dispute that. The question here is, what was the rate of interest at the time the judgment was rendered? If, as in the cases in 68 Ga. and 72 Ga., the contract provided for a conventional rate of interest after maturity, it might be very properly held that that meant after maturity and until paid; and that consequently a judgment rendered on such a contract should bear the same rate of interest. No other decision or statute of the state has been cited as affecting this question. I do not think that the decisions or statutes I have mentioned establish any local rule adverse to the recognized doctrine in the courts of the United States. The ordinary legal rate of interest in Georgia is 7 per cent. per annum. The presumption of the law was that this note would be paid at maturity. Such must be held to have been the expectation of the parties. An implication will not arise when, in the absence of evidence, it must be based upon a presumption which does not exist. A contract to pay a higher rate of interest than the ordinary legal rate will not be extended beyond its terms. If it is desired that the indebtedness should bear such higher rate of interest beyond maturity, the contract should provide for it. In my opinion, in this case interest at the rate of 8 per cent. per annum ceased at the maturity of the note. Let judgment be entered for interest in accordance with the foregoing views.

LYON v. UNION PAC. RY. CO.

(Circuit Court, D. Colorado. May 11, 1888.)

RAILROAD COMPANIES—ACCIDENTS TO TRAINS—PLEADING.

A complaint alleged in substance that plaintiff was an express messenger on defendant's train of cars; that the air-brake apparatus of the several coaches were different and not adjustable, and that by reason thereof, when the train was stopped at B. and the engine detached, the brakes were not set, and the train, by force of gravity, moved down a steep grade, and was thrown from the track, and plaintiff was injured; and also alleged that the accident occurred through defendant's employes negligently leaving the train without setting the brakes. *Held*, that the complaint stated a good cause of action.

At Law. Action for damages. On demurrer to complaint.
C. M. Campbell, for plaintiff.
Teller & Orahood, for defendant.

BREWER, J. In *Lyon, Conservator of Edward S. Kelly, a lunatic, v. Union Pacific Railway Co.*, is a demurrer to the complaint on the ground that it does not state facts sufficient to constitute a cause of action. The chief vice of the complaint, as I read it, is that there are too many words in it. It is very diffuse and prolix. I know that some people can shoot an idea at you in a single sentence, short and pithy, and others take a whole page to express the same idea. Of course the former is much pleasanter to examine, but the mere matter of form is not sufficient to sustain an objection to a complaint good in substance; and while it is not very easy to extract from this complaint the pith of it, I think it may be boiled down to about this: That the lunatic, whose conservator the plaintiff is, was an express messenger on the defendant's train. As such express messenger he has all the rights of a passenger without pay. He was riding on a mixed train. The train was made up of coaches; some belonging to the defendant and some to the Denver & Rio Grande Railway Company. The air brake apparatus of the respective coaches were different and not adjustable one to another, in consequence whereof, when the train stopped at Breckenridge and the locomotive was detached, the brakes were not set, and the train, by force of gravity, started off down a steep hill, and was thrown from the track, and Mr. Kelly injured. That is the first count. The second count is that the defendant negligently employed incompetent and unskillful agents and servants, and that one of these incompetent agents negligently left the train without setting the hand brakes; in consequence whereof, when the engine was detached, the train went off, the car was thrown from the track, and Mr. Kelly injured. The first count charges the use of defective appliances, and the second the negligent employment of unskillful agents and servants, in consequence of which Mr. Kelly, the lunatic, was injured. Now, if this is the gist and pith of this complaint and its two counts, I think it will have to be adjudged that it states a cause of action, and the demurrer will be overruled; defendant to answer in 20 days.