

C. P.

WHITE V. BAKER—WILKINS V. ROW.

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*C. S. Patterson*, for the demurrer, referred to *The Niagara Falls International Bridge Company et al. v. The Great Western Railway Company*, 22 U. C. Q. B. 592; *Crawford v. Beard*, 13 U. C. C. P. 35; *Judson v. Griffin*, 13 U. C. C. P. 350.

*S. Richards, Q. C.*, contra, referred to *Hutton v. Ward*, 15 Q. B. 26; *Westlake on Private International Law*, s. 232, as establishing that the plaintiffs were only entitled to recover the rate of exchange between the two countries at the time of the commencement of the suit, and not at the time when the notes became payable.

*A. Wilson, J.*, delivered the judgment of the court.

It is not disputed that the place of payment is Illinois, where these notes were made and delivered, and that the rate of exchange must be governed by the rate prevailing between the forum in which the suit is brought, and the place where the money is to be transmitted; but it is contended that this rate is to be determined by that which prevailed at the time when the suit was brought, and not at the time when the money became payable.

In the passage cited from *Westlake* it is stated: "But what if the question of place becomes complicated with one of time, by a variation of the rate of exchange between the date when the debt fell due and that when the action is brought? It is the latter period at which the exchange must be taken; for the only fixed element is the amount owing in the place where the debt is payable, increased of course from time to time by such interest as may there accrue upon it. What is due elsewhere fluctuates from forum to forum, and from moment to moment, being always the sum which, on being remitted, will produce that amount."

The assertion (for it is not reasoning), that there is "a fixed element of amount in the place where the debt is payable," is not correct, so long as it is claimed to be paid in a foreign currency, or, in other words, so long as it is subject to the laws of exchange; but even if there be such a fixed element of amount at the place of payment, how can that apply more to the time of the suit than to the time of the payment?

If this had been a bill of exchange instead of a promissory note, the application of the rule of exchange to the time of the dishonor would have been more obvious.

Suppose, then, instead of this, the plaintiffs, residing in Illinois, had drawn a bill upon the defendant in Canada, payable in Illinois, and he had accepted it: when that bill fell due and was dishonored, the plaintiffs, according to the Law Merchant, would have been at liberty to redraw upon the acceptor for the amount he ought at the time of the dishonor of the bill to have paid to the drawers or holder, together with the expenses and any additional exchange which was then prevailing between the two places. Why does not the same rule apply to a note as to a bill? The payee of a note relies upon the punctuality of the maker to redeem the paper, which the payee has probably negotiated; and if the maker do not redeem it, the payee in such a case must: and if he do, why should he not get from the maker the money which he, the payee, has been obliged to pay, and which the maker ought to

have paid? Why, if the payee has paid \$500, which was the whole claim on the note when it fell due, is he to recover what would at the time of his own payment be equal to \$700, because one year after, when he brought his suit in a foreign country, his own currency had risen in value? Or why should the maker avoid paying the full \$500, because the currency had in the meantime of his own neglect fallen? There is no reason why the one should thus gain, and the other should thus lose: they both contracted with relation to a particular time, which was the maturity of the note, and that, we think, must govern. *Story's Conflict of Laws*, ss. 309, 310, 311, and *Suse v. Pompe*, C. B. N. S. 538, are full authorities for this opinion.

The plea is, however, open to objection, in alleging that \$606 12 of lawful money of Canada was equal to the plaintiffs' claim; for their claim was really a question of law, to be determined by many considerations, and this the jury cannot try; but they could try whether \$606 12 of the money of Canada was equal in value to a certain other sum of the currency of the United States; and this is the mode in which it should have been alleged. It is very likely that this is only cause special demurrer in this view of it: but in setting up the tender of a smaller sum as a discharge of the greater, it is made objectionable in substance.

Judgment for plaintiffs on demurrer.

#### WILKINS V. ROW.

*Injury resulting from the clearing of land—Refusal to interfere with verdict of jury.*

A man must exercise care and discretion as to the time and mode of clearing his land: and if his neighbour be injured by rashness or inconsiderateness on his part, he will be liable to him for the damage.

It is, however, always a question for the consideration of the jury whether or not a man has exercised his own right to the injury of his neighbour: and where the case has come fully to them, with all proper directions on the law by the presiding judge, their verdict will not be disturbed by the court, unless it is contrary to law, even though the evidence would fully have warranted a different finding.

[C. P., H. T., 1865.]

This was an action for setting fire to the plaintiff's woods. The trial took place at the last fall assizes, at Cobourg, before Morrisson, J.

The facts of the case, as they appeared in evidence, were, that the defendant, desiring to make a small clearing on his land, which adjoined the plaintiff's, merely for the purpose of a "turnip patch," as it was called, during the very dry weather of the previous summer set fire to a portion of his premises, and the fire extended into and burned a large tract of the plaintiff's land.

There was conflicting evidence as to his having attempted to put out the fire, his efforts appearing to have been directed merely towards protecting his own property, and not the plaintiff's. The damage was very extensive, the fire having destroyed a cedar swamp, which the plaintiff had protected for between forty and fifty years, the timber from which, it appeared, would have sold well for railway ties.

The jury rendered a verdict in favor of the defendant.

*C. E. English* obtained a rule nisi for a new trial, on the ground that the verdict was contrary to law, evidence, and the weight of evidence.