

Co. Ct.]

JENNINGS V. NAPANEE BRUSH COMPANY.

[Co. Ct.]

dent of the debt, and although it is frequently provided that it shall be paid at stated periods before the principal falls due, we know of no authorities holding that a failure to pay it dishonors the note so as to let in all defences against subsequent purchasers for value without any other notice of defects except the mere fact that such interest has not been paid; and we do not think it should have that effect. The maturity of the note within the meaning of the commercial rule on the question is the time when the principal becomes due."

*Boss v. Hewitt* is also approved in *National Bank of North America v. Kirby*, 108 Mass. 497 (1871), and the latter case is cited with approval, and its general doctrines affirmed in *Cromwell v. County of Sac*, 96 U. S. 51 (1871).

In the *National Bank v. Kirby* the following language occurs in the judgment of COLT, J.:—"Interest is an incident of the debt and differs from it in many respects. It is not subject to protest and notice to endorsers, or days of grace, according to the law merchant. Interest is not recovered on overdue interest, and the Statute of Limitations does not run against it until the principal is due. The holder of the note, with interest payable annually, loses no rights against the parties to it, whether makers or endorsers, by neglecting to demand it, and he has the election to do so or wait and collect it all with the principal." The learned judge adds further in another part of his judgment: "There is a large class of negotiable securities, the principal of which is payable only at the end of many years, but with interest payable either annually or semi-annually, and many of the notes given in the purchase of real estate and secured by mortgage, especially in the country, are of this class, as are most of the obligations for debts contracted by public, and many of those incurred by private corporations; and it is important that the value due to their negotiable character should not be impaired by new rules tending to lessen their currency and credit."

See also Bigelow on Bills and Notes (2 Ed.) 445.

I find in the case of *Newell v. Gregg*, 51 Barbour 263, an authority for the opposite view, and in that case it was expressly held that the payment of the interest at the fixed period was as much a part of the agreement as the promise to pay the principal, and that the effect of non-payment of the interest was to dishonor the note. This case is cited in the case of *Cromwell v. County of Sac*, 96 U. S., but is not commented on.

From the foregoing cases it may be concluded that the rule in the United States, as affirmed by high authority, is that the non-payment of an instalment of interest, payable by the tenor of the

contract, and expressed on the face of the note, before the date fixed for the payment of the principal will not amount to a dishonor of the note, and that as between subsequent holders for value without notice, and the endorsers, such non-payment cannot be relied upon even where there has been no presentment or notice of dishonor. That presentment and notice of dishonor is wholly unnecessary, and that, notwithstanding the default, the original liability of the parties is preserved.

It was argued before me that under the case of *Orridge v. Sherborn*, 11 M. & W. 374 which is the authority for protesting and giving notice of dishonor at the maturity of each instalment of a note, the principal money secured by which is payable in instalments, the payment of an instalment of interest was equally within the authority of that case. That an instalment of interest payable at a fixed date was to all intents and purposes equivalent to an instalment of principal. There certainly does appear to be a close analogy, but if the American cases decide rightly, that interest is a mere incident of the debt, "the natural growth" of the money, even when payable by an express term of the contract, then doubtless the defence set up here should fail.

But is interest a mere incident of the debt within our own or the English authorities? With a certain propriety, interest may be said always to be an incident to the principal; not only when it is part of the contract, but also when it is allowed as damages. In the former case it is however not strictly an incident or rather it is more than an incident. There must be a principal sum; but after interest has accrued it is no longer dependant on the principal; it does not necessarily follow it. (*Crouse v. Park*, 3 U. C. R. 458, *Hudson v. Fawcett*, 2 D. & L. 81, *Watkins v. Morgan*, 6 C. & P. 661.) Conventional interest is of itself a debt, and payment of the principal alone will not affect the right to recover the interest, and yet it is so allied to the principal, that if the latter is recovered without the recovery of the interest when not secured by a separate instrument, it is barred; not because the interest cannot exist as a valid demand distinct from the principal; but because demands arising upon one agreement for principal and interest due to the same party at the same time cannot be divided, and each made the subject of a separate action. In that respect there is no difference between principal and interest. An action brought for one would bar both, whether included in the claim or recovery or not. But such interest made payable before the principal is due may be sued for in an action for that alone if brought before the principal is due; and if sued for before the