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 Lougee v. Washburn.
 

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was the fact, the court might have permitted the writ to be filed on motion. This may be done, by leave, after the return day.

There was evidence therefore of a lawful attachment by the defendant, and the agreement to sell and apply the proceeds to the payment of the debt was valid. Whether the statute provisions for that purpose were strictly pursued or not, is of no importance to the plaintiff. The attachment which he made having been dissolved, he has no ground of objection on account of what was done by the parties subsequent to the defendant's attachment.

*Judgment on the verdict.*

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 LOUGEE v. WASHBURN.

Upon contracts made in foreign States, interest according to the law of the forum will be taxed, unless evidence is adduced that the parties have agreed on a different rate, or that a different rate was established by the laws or usages of the place of contract.

The date of a contract is evidence of the place where it was made, and connected with evidence that the parties soon afterward were domiciled there, is competent evidence that they were so domiciled at the time.

ASSUMPSIT. The first count was upon a note dated Compton March 4, 1834, for \$23.12, payable by the defendant to the plaintiff or bearer in thirty days with use.

The second count was upon a note dated as the first named, and for \$4.12 payable by the defendant to Orlan Farwell or bearer in sixty days with interest.

To both counts the defendant pleaded, 1. The general issue. 2. *Actio non*, because he says, that on the 7th day of September 1823, at a place called Compton, to wit at

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said Lancaster, the defendant was indebted to the plaintiff in the sum of \$20.05, and being so indebted, afterward, to wit on the same day, at said Compton, to wit at said Lancaster, gave and executed to the plaintiff his promissory note for that sum. That on the same 7th day of September 1823, at Compton, to wit at Lancaster aforesaid, it was unlawfully and corruptly agreed between the parties that the plaintiff should give day of payment to the defendant on the note, and that the defendant should pay to the plaintiff at and after the rate of twenty-five pounds for the forbearance and giving day of payment of one hundred pounds for one year, and for a longer or shorter time; and thereafterward to wit on the 4th day of March 1834, in pursuance of such unlawful and corrupt agreement, &c., there was a looking over, and the interest was computed at the rate of twenty-five pounds, &c., and the note in the first count mentioned was made and executed to the plaintiff, and \$10 of unlawful interest which had accrued on said first note, was included in and made part of the consideration of it.

The plaintiff replied *precludi non*, because at the time of the execution of the note in the first count mentioned, the plaintiff and defendant were both residents of Compton in the Province of Lower Canada, and that said note and all contracts in reference to it were there executed, and the note was there to be paid, and by the laws of Canada no unlawful interest was paid upon or secured by said note, and this he is ready to verify. To which the defendant rejoined, that the defendant was not at the time of the execution of the note a resident at said Compton, nor was said note there to be paid, and concluded to the country; and issue was joined.

A witness testified that he had known the plaintiff six years past, and that he lived, and still lives, in Compton; that he has also known the defendant, who now lives in Pittsburg in the county of Coös; that he has lived there

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for seven years past, and told the witness, that he came from Canada to that place.

The court instructed the jury, that from this testimony and the date of the note, which purported to be at Compton, it was competent for them to find that the parties lived there at the time the note was made, and that the note was to have been paid then, if they were satisfied of the facts.

The court further instructed the jury, that as no evidence was offered to show what the rate of interest was in Canada, if they should find for the plaintiff, they might cast the interest at six per cent.

The jury returned a verdict for the plaintiff, which the defendant moved to set aside, by reason of the supposed error in the instructions of the court, and for a new trial.

*Young*, for the plaintiff.

*Cooper*, for the defendant.

Woods, J. Upon contracts drawing interest, either by their express terms, or by force of an agreement that is usually implied, to pay interest upon money retained in the hands of a debtor, the rule is, to tax it at the rate which is established by the law of the forum; unless a different rate shall appear to have been settled by an agreement of the parties, not open to any legal exception. The party insisting upon a different rate, must show that it has been so agreed, either in express terms, or else by force of the laws of the place of the contract with reference to which the contract is presumed in law to have been made. For the courts of one country do not take notice officially of the laws of another country, but permit them to be proved, when a knowledge of them is suggested by a party to be requisite for ascertaining his rights in regard to a matter in controversy. The direc-

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tion of the court in regard to the interest, was therefore correct. It was to no purpose for a party to insist that the contract was made abroad and where a different rate of interest was prescribed, if he refused or was unprepared to show to the court what that rate in fact was. As to the other point. A contract is produced dated "Compton March 4, 1834." Why are those words and figures placed there? Without the least doubt for the same purpose that all the other words and figures there were written: that is to say, for the purpose of settling and preserving the evidence of the terms of the contract, and the liabilities of the party who has signed it. To do that, it is necessary that the place and the time should appear, and to render both those circumstances certain, and to take away all question concerning them, they are inserted in the contract and agreed to by the party who signs it. The date is therefore evidence of a very proper and convincing character to settle the matters of the time and place when and where a contract is made. *Barker v. Jones*, 8 N. H. 414.

That alone, without further evidence, might have sufficed to settle the construction of the contract. But the domicile of the parties, if proved to have been other than the place of its execution, would have controlled the construction, because it would have afforded evidence that a place for the execution of the contract was intended, different from the place where it was made. *Story's Conf. of Laws*, sec. 272, 273. But the question raised by the pleadings was such, that it becomes necessary to consider the date of the contract in connection with the testimony of the witness, as evidence of the domicile of the parties. The two amount to this. Six or seven years before the trial, which would carry the point of time back to 1836 or 1837, both these parties actually lived and had their domicils in Canada. On the fourth day of March 1834, they were both together there. In the absence of any evidence

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to the contrary, the evidence is not only pertinent but cogent, to prove that the parties resided there at the moment of entering into the contract.

We are therefore of the opinion that the instructions given by the court were correct, and that there must be  
*Judgment on the verdict.*

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LUCAS v. COLE & Tr.

The principal defendant is a competent witness for the party summoned as trustee, upon the trial of the issue between him and the plaintiff.

FOREIGN ATTACHMENT. The principal defendant was defaulted, and the plaintiff elected to try the question of liability of the trustee by the jury, no disclosure having been taken. On the trial of the issue the defendant offered the principal debtor as a witness, and the court ruled that he was incompetent to testify. A verdict having been rendered for the plaintiff, the trustee moved to set the same aside and for a new trial, upon the ground that the witness had been erroneously excluded.

*Wells*, for the plaintiff, contended that public policy required the exclusion of the witness in such cases, to prevent collusion between the debtor and his trustee, for the purpose of concealing the property of the former from the view of the creditor.

*J. W. Williams*, for the trustee.

WOODS, J. It was held in *Wallace v. Blanchard*, 3 N. H. 395, that the proceeding against the principal debtor and