

Henry Vs. Risk

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Court : US Supreme Court

Decided On : 1788

Appeal No. : 1 U.S. 265

Appellant : Henry

Respondent : Risk

Judgement :

HENRY v. RISK - 1 U.S. 265 (1788)

U.S. Supreme Court HENRY v. RISK, 1 U.S. 265 (1788)

1 U.S. 265 (Dall.)

Henry Exor.

v.

Risk et al.

Supreme Court of Pennsylvania

April Term, 1788

This was an action brought for goods sold and delivered in the city of Philadelphia, the Plaintiff having charged interest upon his account, after allowing six months credit. Upon the trial it was admitted, that the net amount of the goods had been paid; and the counsel on both sides agreed, that, whether the interest ought to be

allowed, was the only question in the cause.

Ingersoll for the Plaintiff. A Jury may give interest, by way of damages, in an action for goods sold and delivered, when it is the agreement of the parties, when the Plaintiff has been vexatiously kept out of his money, or when it is the custom of the trade. Doug. 361. He then offered to prove by witnesses, that it was the custom of the trade in Philadelphia, to allow interest in cases similar to the present.

But by M'Kean, Chief Justice:

The point has been repeatedly determined otherwise in this Court, as well as in the Courts of England; and, therefore, witnesses cannot be admitted to contradict the established principles of the law. The case in Douglas is confined merely to the American trade. The usage has been otherwise in Pennsylvania, between inhabitants.

Bradford for the Defendants. Interest shall not be allowed upon an open account, for goods sold and delivered. 3 Wils. 206. Jacob's Claim, vs. the Estate of Adams et al. ant. 52.

By the Court. The question is shortly this: The Plaintiff's testator having sold a considerable quantity of goods, wares, and merchandize, to the Defendants, for which the Defendants have paid the net amount, shall interest be allowed upon the account for these goods, wares, and merchandize, without any notice to the Defendants,

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that interest would be charged, or any agreement, upon their part, to pay it? If this point had not been already settled, it would nevertheless be highly inconvenient to the public welfare (which it is our duty to consider) that the Plaintiff's demand should be admitted; for, as the shopkeeper is obliged to retail his merchandize upon a credit, which sometimes terminates in a total loss, and is often unreasonably protracted by the person whom he trusts, his ruin would inevitably ensue, if, besides these disadvantages, the merchant, after a short time, could

charge him with interest, the accumulation of which, must, insensibly, consume the flow and precarious profits of his business. On the other hand, it is, at once, reasonable and useful, that the accounts between merchants and the retailers should be periodically settled and liquidated; and when that is done, it is easy for the creditor to take a bond, a note, or such other security as will entitle him to interest. The case, however, does not, at this day, depend upon general arguments; the law, which we cannot alter, has been already ascertained. Jacob's claim v. the Estate of Adams and his Wife determined in this Court, has been cited for the Defendants. In that case, 'one Flower having sold lands to Jacobs, died before the purchase money was paid, or the conveyance executed. His executors, however, received the money, and made a deed for the land. Afterwards the will, under which the executors acted, was set aside as having been obtained from the testator by practice and undue influence; and letters of administration being consequently granted, the administrators, who had warned Jacobs not to pay the money, instituted a suit against him and recovered the amount. It was, upon these circumstances, adjudged, that the executors should refund to Jacobs; but that no interest should be allowed, because the money had been received, as well as paid, in a mistake, and no fraud appeared on either side.' There have been many determinations in the Courts of Pennsylvania, and many authorities may, likewise, be collected from the English law books, in which the Judges have uniformly maintained, that interest shall not be allowed, upon an open account for goods sold and delivered. The case in 3 Wils. 205. 6. expressly recognizes this doctrine. With respect to the authority cited from Douglas, that evidently relates only to the American trade, in which it appeared to have been the usage for the merchants in England to allow their American correspondents 12 months credit, and then to charge them 5 percent interest; and that the English tradesmen, in the same trade, allowed the merchants 14 months credit, and then charged them a similar interest. That determination, therefore, does not interfere with the general rule; and the Court are unanimously of opinion, that the interest claimed by the Plaintiff, upon the present occasion, ought not to be allowed by the Jury. The verdict of the Jury was conformably to this opinion. On the meeting of the Court the next day, the Chief Justice observed, 'That in the opinion delivered yesterday in this

cause, the Court had not relied merely on the cases decided here, but on all the cases which had been decided upon the subject, in all the Courts of England. These cases, although he had before generally referred to them, he now thought proper to mention particularly, that every doubt upon the question might be finally removed. In the Common Pleas, for money owing for goods sold and delivered, no interest shall be allowed. 1 Barnes Notes 157. 3 Wilson 206. Pract. Reg. Com. Pl.357. In the King's Bench, interest refused upon an inland bill of exchange after acceptance, where no protest; and the Court there said, that it had never been allowed barely for money lent, without a note. Harris v. Benson. 2 Stra. 910. In the Court of Chancery, interest was not allowed on book and simple contract debts &c.; 3 Rep. Chan. 64. Dolman v. Pritman.

'Thus the concurrent practice of all the Courts in England, has in these cases disallowed the charge of interest; and the practice of Pennsylvania, has been regulated by the same principles. It is not, indeed, more than four years, since in this State, on the other side of the Susquehanna, the Juries have been induced to allow interest, even upon notes of hand.'