NORTH-CAROLINA GAZETTE.

(Vol. 8.) Saturday, December 21, 1793. (No. 415.)

CHARLESTON, *November* 13.

FEDERAL CIRCUIT COURT.

ON Friday the 25th ult. in the federal circuit court, held in this city, the important cause of William Higginton, surviving copartner of Greenwood and Higginson, of London, merchants; and William Greenwood, surviving co-partner of Leger and Greenwood of Charleston, and George Crofts and Co. of Georgetown—was again argued, and at length determined by a jury.

This suit was originally instituted by a bill in equity, against the surviving co partner, and the executors of the deceased co partners, for the performance of contracts and a discovery of assets. A demurrer to the bill, and a plea to the jurisdiction of the court, was argued at October term, 1791; the plea and demurrer were over-ruled, and the parties ordered to answer over. A writ of error from this order was tendered at October term 1792, and the question of appeal fully argued. The judges were of opinion that no appeal lay to the supreme court, but from final judgments and decrees; and this being only an interlocutory order, the same should be endorsed on the writ of error. Upon this the defendants severally filed answers to the bill in equity, and at last May term, the counsel for the defendants applied to the court at Columbia to have this cause referred to a jury, to find the quantum of debt due; suggesting, that as the object of the bill in equity was answered, (viz. a discovery of assets) therefore *plain, adequate* and *complete* remedy could be now had at law. Judge Patterson was for retaining the cause to be determined in equity: Judge Bee for sending it to a jury to assess the balance then due. The court being divided, the motion fell to the ground; and the cause in equity was then fully argued on the merits, which were as follow:

It appeared, by the pleadings and the evidence, that in 1771 the defendants wrote to the complainants to supply them with goods, and agreed to allow the usual commission on the purchases, and five per cent. interest; that the accounts of the complainants should be settled and balanced every year, and interest charged on the several invoices after a certain period from their respective dates; and, if not paid at the end of each year, should be added to the principal, and draw interest also at five per cent.

This appeared to be according to the custom of merchants engaged in that trade at the same time. The dealings between the parties were continued for several years, and the accounts of the complainants were stated according to the agreement, and sent over to the defendants, until the 31st of December, 1777, which they acknowledged to have received, and to be just.

Mr. William Greenwood, one of the defendants, and the only surviving co partner of both the companies in America, was put on the confiscation list in South-Carolina, and his property sequestered for the use of the state in 1782. He afterwards went to England, and the complainant there applied to him to acknowledge a stated account against Leger and Greenwood, which was made up to the amount of about 34,000l, in which compound interest was charged for the whole time. He desired this might be the purpose of recovering it of the commissioners of confiscated property in South-Carolina, which the defendant signed accordingly; but, in his answer to the bill, he avers that he was under a duress, and signed without examination. There was some evidence to this point.

The cause was argued with great ability, learning and eloquence on both sides. The complainants contended that they were entitled, by virtue of the contract and the custom of the trade, to the principal and interest on their debt during the whole time, and interest on the accumulation each year. Many cases from the law were produced in support of their claim, and the treaty of peace was particularly insisted on.

The defendant contended, that no compound interest ought to be allowed after the mutual dealings of the parties had ceased; and that no interest at all ought to be paid during the war. As all communication was prohibited by the sovereign power of each nation, it was unlawful, and indeed impossible, to make remittances; that the complainant being an alien enemy, had no power to sue, and had no demand during the war; that his claim was forfeited by the laws of nations; and that the treaty of peace only restored him to the right he had at the commencement of the war: that the word debts in the treaty did not include interest of course; and that, in treaties where interest is intended to be included, it is always mentioned: [several extracts from treaties were read in proof of this] That the act of a sovereign of a state, is the act of every individual who composes it; and that the complainant did, in fact, hinder the defendant from making payment, and therefore he should not have interest, which is damages of detaining the debt; besides, that in a great national calamity, where the defendants could receive no profits, no interest ought in equity to accrue. This appeared to have been the law in Ireland, and ought to be so here, &c.

The judges delivered their seperate opinions with great clearness and precision.

Judge Bee was of opinion, that the complainants should recover interest, according to the contract, till 1777, on both debts; that the interest should then cease till November, 1780, the time of signing the provisional articles of the treaty of peace, and should then commence according to the contract, and continue till paid.

Judge Paterson was of opinion, that the compound interest should be paid on both debts, during the time the parties had mutual dealings, to wit: on the 16,000l. till 1777, due from George Crofts & Co. and then to draw simple interest at 5 per cent till paid, that being the time the dealings ceased; and that the 34,000l. draw compound interest till December, 1783, the time the dealings with Leger & Greenwood ceased, from which time it should draw simple interest at 5 per cent. till paid. He was of opinion, that the treaty of peace restored the complainants to all the rights they would have had if no war had been; and that the interest was a necessary consequence of the debt, and was intended by the treaty of peace.

The court being divided, no final decree was made.

The motion for sending the cause to a jury, being renewed at this term, the matter was fully argued by the counsel on each side. The court were of opinion, that as the judges were divided on both points at May term last, the cause should be considered as in the same situation *now* that it was *then*; and on the merits of the motion, were of opinion for directing an issue to a jury, to say the quantum of debt now due from the defendants to the complainant; which issue being accordingly made up, the cause came on for argument, on Tuesday, the 20th ult. before a special jury, summoned and impannelled, by consent of parties, agreeably to the mode practiced in the state courts of South-Carolina, consisting of the following gentlemen:

David Alexander, Joshua Hargreaves Robert Henry Robert Hervey, John Black James Bulgin, Daniel Desaussure, Edward Darrell, Edward North, James M'Call, William Somerfall, Joseph Vesey—the six first being British, settled here since the peace; the latter Americans.

The same grounds of argument that were insisted on at Columbia, in May last were gone over again, with great clearness and precision, and many new ones adduced by the counsel on both sides, who exerted themselves, if possible, beyond their usual endeavors, in favor of their respective clients. The court and jury attended with great satisfaction to these arguments, which were continued for two days, from morning till sun set.

In charging the jury—judge Cushing was clearly of opinion, that this transaction being on a written contract, in the nature of a covenant, in which interest was expressly stipulated, the same should not be considered in the nature of damages, but that the one was as much due as the other, and of course, that the 4th article of the treaty of peace applied fully to the case as a *bona fide* debt heretofore contracted; that the several cases produced from the law of nations, custom of merchants and other treaties, did not apply in this instance: he therefore directed the jury to find the full sum demanded, both principal and interest.

Judge Bee differed; he was of opinion the contract originally was entered into for the mutual benefit of the parties; that the defendants being prevented from performing their part by the sovereign power of both nations; and it appearing particularly, that property shipped by the defendants in a circuitous voyage, to remit money to the plaintiffs, had been captured and condemned in England, the mutual advantages of course ceased when hostilities commenced, as also mutual dealings; and hence the determination in the case of Sterling and Drummond, in the house of lords in England, that no compound interest should be allowed. The 4th clause of the treaty of peace had ever appeared to him as chiefly intended to prevent the payment of debts in depreciated paper, or any other than sterling money; that interest not being expressly mentioned in the treaty, the allowance or not was open to discussion, as it is laid down to be in the nature of damages for the detention of a debt, and not as part of the debt itself; that the law laid down in 1st Brown, 526, determined also in the house of lords in England, viz. where the product of funds cease during a great national calamity, their interest, although expressly stipulated for, should cease, ought also to apply in this case; that the decision for this cause might establish a precedent for America, and if settled on principles recognized in England, whose laws the plaintiffs were subject to, no reasonable ground for complaint could remain. He therefore was of opinion that the jury, in considering all these circumstances, might allow such interest or not, as they should think just. The jury retired at sun-set, and at half after one agreed upon their verdicts, which were sealed up and delivered into court the next morning, in the following words:

William Higginson, survivor of Greenwood and Higginson, *versus* William Greenwood, survivor of Leger & Greenwood.

We find for the plaintiff, Eighty-seven thousand nine hundred and eighteen dollars, and sixty-five cents.

D. DESAUSSURE, Foreman.

William Greenwood, survivor of Greenwood and Higginson, *versus* William Greenwood, survivor of George Crofts & Co.

We find for the plaintiff, Fifty-three thousand nine hundred and two dollars, and forty-eight cents.

C. DESAUSSURE, Foreman.

The jury, at the time of delivering in the above verdicts, informed the court, that they had disallowed interest during the war, on the debts and credits, and allowed simple interest of five per cent. since the peace.

LONDON.

IRISH HOUSE OF LORDS.

THE house resolved itself into a committee on the bill to prevent the election and appointment of conventions.

The lord chancellor moved an amendment