

PRYOR vs. WATSON.

Profert of the endorsement of a bill of exchange is necessary, and want of it ground of demurrer.

The damages allowed by Statute on bills drawn in this State, payable in Louisiana, and protest for non-acceptance or non-payment, is four per cent. upon the amount of the bill, not four per cent. per annum.

Writ of Error to the Lafayette Circuit Court.

Assumpsit by Matthew Watson against Richard Pryor, on a bill of

exchange, drawn in this State, by Pryor, in favor of Robert Carrington, upon Brander, Williams & Co., of New Orleans, for \$1942.96, dated 27th May, 1843, payable ten months after date, and endorsed by Carrington to plaintiff.

There are three counts in the declaration, averring in different forms, the execution and tenor of the bill, the endorsement to plaintiff, presentment for payment, protest, &c., but there is no profert of the endorsement in either count. There are also the common money counts.

The defendant demurred to the declaration for want of profert of the endorsement, but the court overruled the demurrer, and rendered judgment as stated in the opinion of this court.

Pryor brought error.

WATKINS & CURRAN, for the plaintiff. 1. The judgment upon the demurrer is clearly erroneous; as it is necessary to make profert of an assignment. By our practice (*Rev. Stat. p. 628, sec. 62*), a demurrer is joint and several; consequently the court should have sustained the demurrer as to the first three counts and overruled it as to the other.

2. The judgment being general upon all the counts, must be reversed. 1 *Ch. Pl.* 447, 448, 655, and cases cited.

3. The judgment is for the amount of the bill, costs of protest and interest, and also damages at the rate of four per cent. per annum.

4. The judgment should have been entered for the amount of the bill, interest, costs of protest, and damages in the aggregate in a gross sum.

No Counsel for defendant.

OLDHAM, J. It was held by the court in the cases of *Alston & Patrick v. Whiting & Stark*, 1 *Eng. R.* 402, and *Merchant v. Slater*, *ib.* 529, that under our Statute profert of the assignment of a bond or note is necessary. The Statute applies with equal force to endorsements of bills of exchange. The demurrer of the defendant below should have been sustained to those counts of the declaration,

which averred an endorsement of the bill, and failed to make profert of the endorsement.

The judgment of the court is that the plaintiff have and recover of the defendant the said sum of nineteen hundred and forty-two 96-100 dollars, and also the sum of five dollars costs of protest, and interest at the rate of ten per cent. per annum on said sum of nineteen hundred and forty-two 96-100 dollars from date of protest as aforesaid until the amount of said bill shall be paid, and also damages at the rate of four per cent. per annum, &c.

The damages allowed by law upon the class of bills to which that set forth in the declaration belongs, is four per cent. upon the amount of the bill, and not four per cent. per annum. The liability of the parties to the bill to pay that amount of damages, is fixed "when the bill shall be duly presented for acceptance or payment, and protested for non-acceptance or non-payment." The damages are given as a penalty, the amount being fixed by law without regard to time. The judgment must be reversed, with leave to the plaintiff to amend his declaration.
