

LANGRIDGE ET AL. VS. COBBS, EX.

Suit by petition and summons on an obligation for a specified sum of money, with interest at ten per cent., from a day anterior to its date: *Held*, that the breach in the petition, being in the words of the statute, is sufficient—that the court know of no reason why the bond will not sustain the action—do not see how the bond is usurious; and if so, that objection is not presented by the demurrer, and could not be.

Appeal from St. Francis Circuit Court.

HON MARK W. ALEXANDER, Circuit Judge.

GARLAND & RANDOLPH, for appellant.

Mr. Justice FAIRCHILD delivered the opinion of the court.

Thomas Farrar, for the use of Samuel F. Holloway, brought suit, by petition and summons, against Nancy C. Langridge and Thomas H. Alexander, on a bond for twelve hundred dollars, dated the 26th of April, 1858, "bearing ten per cent. interest from the 25th of day of December, 1857."

The defendants demurred to the petition, because the breach was not large enough, and because petition and summons cannot be sustained on the bond for its being "an obligation to pay a specified sum of money, and interest at ten per cent., from a day anterior to its date." The court overruled the demurrer, judgment was rendered, and defendants appealed.

The breach is in the words of the statute, and covers principal and interest. *Cail vs. Brookfield*, 4 Ark., 554.

No reason is given why the bond will not sustain the action: we know of none.

It is suggested for the appellants that the bond is usurious.

We do not see how; and if so, that objection is not presented by the demurrer and could not be. *Howell vs. Vansant*, 2 Eng. 146; *Jennings vs. Willamowicz*, ib. 277; *Pilsbury vs. McNally*, 22 Ark. 409.

Farrar having died during the litigation, the suit was revived in the name of Cobbs, his executor.

Judgment affirmed.
