Decision of the Supreme Court of the United States.

No. 187.—December Term, 1872.

Brigham Young, Trustee in Trust for the Church of Jesus Christ of Latter-Day Saints, Plaintiff in Error, vs. William S. Godbe. } In error to the Supreme Court of the Territory of Utah.

Mr. Justice DAVIS delivered the opinion of the Court.

The controversy in this case turns on the question whether Young, in his character of Trustee in Trust, owed Godbe the money, or whether the Deseret Irrigation and Canal Company, of which Young had the management, was properly chargeable with it. The evidence on both sides was directed to the elucidation of this point, for there did not seem to be any dispute that Godbe had advanced the money to Young, either as trustee or for the use of the canal company. Godbe's effort was to show that Young as trustee received it, while Young sought to cast the debt on the canal company. After the defendant had closed his testimony, the plaintiff placed upon the stand one Armstrong, who testified that he was, in 1865, bookkeeper of Kimball & Lawrence, merchants of Salt Lake City, who had a large account against the canal company; that Lawrence took this account and went away, and in a short time returned stating that the trustee in trust had settled it by giving credit to a certain person on tithing, and that it so appeared on the books of Kimball & Lawrence. This testimony was objected to by the defendant for the reason that it was not in rebuttal, and therefore illegal, but the court overruled the objection and permitted the testimony to go to the jury for what it was worth. We are not prepared to say that Godbe could not rebut the case made by Young by showing that the affairs of the company were so connected with the church that, as one of the witnesses said, "he did not know the difference between them." But the evidence on this subject should not have been the declaration by one person of what another said. The fact that Young had settled the account of Kimball and Lawrence in the way he did was proper evidence to go to the jury, if Lawrence had testified to it, but Armstrong's statement of what Lawrence told him was pure hearsay. Besides, the court on its own motion enlarged the scope of the evidence by directing the jury to consider it for what it was worth. This direction enabled the jury to take a wider range of the subject than they otherwise would, and naturally inclined them to consider the evidence as fixing the right of the plaintiff to recover from the defendant in the capacity in which he was sued.

On account of the error in admitting the testimony of Armstrong, and in indicating the effect which the jury should give to it, the judgment will have to be reversed.

But as the case goes back for a new trial, it is proper to say a word upon the subject of interest, which seems more than anything else to be the chief point of difference between the parties to this litigation. We can see no objection to the charge of the court on this subject. If a debt ought to be paid at a particular time, and is not, owing to the default of the debtor, the creditor is entitled to interest from that time by way of compensation for the delay in payment. And if the account be stated, as the evidence went to show was the case here, interest begins to run at once.—(1 American Leading Cases, 5th edition, pp. 626 and 514.)

It is said there is no law in the Territory of Utah prescribing a rate of interest in transactions like the one in controvery in this suit, and that, therefore, no interest can be recovered. But this result does not follow. If there is no statute on the subject, interest will be allowed by way of damages for unreasonably withholding payment of an overdue account. The rate must be reasonable, and conform to the custom which obtains in the community in dealings of this character.

The judgment is reversed, and a venire de novo awarded.

D. W. Middleton,
C. S. C., U. S.

—— Bismarck consumes a keg of beer every two days. Great man, Bismarck.

Cause of Senator Sumner's Divorce.

Mrs. Hooper, says the Minneapolis *Tribune*, was a young widow, and young widows always have an aversion to becoming old widows, while they are as much in demand as second-hand flatirons. Moreover, Charles Sumner had attained fame; he was the best constitutional lawyer in America, and had the best knowledge of foreign affairs; he was the pet of the old Bay State, and was one of those happy beings who live to enjoy the sweet rewards of martyrdom. So the rich, gay, accomplished, festive, vivacious, popular young widow went to keep house and darn stockings for the unsocial, crusty, conceited old orator. She didn't do it worth a cent. We are aware that some matters are private, and domestic secrets ought to be respected by a gossipping press. But there are none in this case. Neither party has affected the slightest concealment of the situation. So it is proper to say that neither of them ever saw a happy, or even moderately comfortable day, after the ill-assorted marriage. It was Milton and Mary Powell over again. Like the fair daughter of the Cavaliers, Mrs. Hooper-Sumner was social and hospitable; Sumner was aristocratic, arrogant and domineering. His way was the only way; except one, indeed—the way where divorces lie. He haughtily declined to meet her guests; refused to be introduced to her acquaintances; his idea of a wife was a fair, fond, gelatinous female, with no will of her own; who should loudly say her orisons to him, and treat him like a sacred graven image. She failed to see it in that light, and went home to live with Mr. Samuel Hooper, in Boston, where her lord's fame will henceforth be very likely to decline.

—— An Iowa woman is accused of putting on a good many heirs. She has had four pairs of twins in seven years.