

advised the parties to draw their conveyance in the manner that was adopted. This was a fraud, which will preclude him from recovering the land against the tenant. It is then unnecessary to determine what effect that fraud had upon the right of the other demandant, because the writ appearing by the evidence to be false in a material point, the tenant was clearly entitled to a verdict.

There is another view of this case, involving the merits of all the title of these demandants, which is most decisively against them. At the time *Samuel Langley* conveyed this land to the demandants, he had no title. The fee was vested absolutely in *Durell*. The agreement of *Durell*, to reconvey upon the payment of a certain sum, was reduced to writing; but, not being under seal, that writing did not make the conveyance from *Levi Langley* to *Durell* a mortgage.(1)

It is clear, then, that at the time when *Durell* conveyed the land to *Samuel Langley*, and he to the tenant, these demandants had no title. And as the tenant paid *Durell* the amount due to him, and *Durell* conveyed to *Samuel Langley*, merely to enable him to convey to the tenant, *Samuel Langley* must be considered merely as an instrument, and a conveyance to him as such, cannot enure to the benefit of these demandants.(2) Those conveyances were in no wise prejudicial to the demandants; and it is very clear they can derive no advantage from them.

*Judgment on the verdict.*



STEPHEN HODGDON vs. PETER HODGDON.

In an action of debt upon a judgment, upon which payments have been made, interest is to be cast upon the judgment in the same manner as upon a note of hand, which has been in part paid.

This was an action of debt upon a judgment rendered by this court, at November term, 1815, in this county, for \$280 debt, and \$66 89 costs of suit. The defendant had paid to the plaintiff, at several times since the said judgment was

Runlet  
vs.  
Otis.

(1) 1 N. H.  
Rep. 39, Lund  
vs. Lund.

(2) 1 N. H.  
Rep. 167,  
Marsh & wife  
vs. Rice.

Hodgdon  
vs.  
Hodgdon.

rendered, several sums, amounting in the whole to \$345 75, which had been accepted in part satisfaction of the judgment, and the question was, in what manner interest was to be computed upon the judgment.

*Crosby*, counsel for the defendant.

*Hodgdon*, for the plaintiff.

*Crosby*, for the defendant, contended, that the plaintiff was entitled to recover only the difference between the sums paid, and the amount of the judgment, and interest upon that difference; and he relied upon the cases in which it has been decided, that if the whole principal has been paid, no action lies for interest.

RICHARDSON, C. J., delivered the opinion of the court.

It seems to be well settled as a general rule, that where the whole amount of the principal has been paid, no action can be maintained for interest(1); and the question now to be decided, seems to have had its origin in an attempt of this defendant to apply this general rule to the case now before us. His argument is this; if when the whole principal has been paid, no action can be maintained for the interest, then when a part has been paid, no interest ought to be recovered for any detention of that part. But a very slight attention to the grounds on which the rule rests, will shew, that it can have no application whatever, to the case of a partial payment of the principal. In the case of *Dixon vs. Parker et a.* before cited, Lord *Kenyon* is reported to have said, "that the jury give the interest in the form of damages, but there must be something to support them; that here the principal having been paid, for *it* there could be no verdict; that that being gone, every thing founded on it must go too, therefore, no damages could be given in the present case, the claim for which alone was the foundation of the present action." This seems to be the only foundation for the rule, and we are inclined to think, that there is more reason to doubt its sufficiency to sustain the rule in some of the cases in which it has been actually applied, than to suppose it can justify a still wider application of the principle. For however satisfactory this reason of the rule may

(1) 1 Es. Ca. 110, *Dixon vs. Parker et a.*—3 John. 229, *Tillotson vs. Preston.*

be, where the rule is applied to cases, in which there was no special contract to pay interest, yet where there is a contract to pay a certain sum and interest, it is not very easy to comprehend why the non-payment of interest is not as much a breach of the contract, as the non-payment of the principal; nor why an action should not be maintained for a breach of the contract as to interest, although it may have been performed as to the principal. But we must take the rule as it is. It cannot however govern this case. Here a part of the principal remains unpaid, and for that the action may clearly be maintained, and as incident to it the plaintiff is entitled to recover as damages for the detention of his debt, interest upon the judgment; to be computed in the same manner that interest is computed on a note of hand, upon which payments have been made.

It has been decided that the payment of interest upon a judgment cannot be coerced by an execution.<sup>(1)</sup> But a judgment creditor has a most unquestionable right to forbear to collect the whole amount of the judgment, in order to enable him by an action of debt upon the judgment, to recover the interest. Nor can this right be defeated by a tender of the balance due upon the judgment, and upon the interest of that balance. A judgment creditor is entitled to receive the amount of his judgment and interest upon it until paid; and a tender of any thing short of this, is no bar to an action of debt upon the judgment.

*Judgment for the plaintiff.*

STEPHEN MOODY vs. THOMAS LEAVITT.

*A.* made a note payable to *B.*, or order, at a future day, and under the note an agreement was written and signed by *A.* and *B.*, that *A.* should do certain acts by such future day, which acts being done, *B.* to relinquish all claims upon the note; and the paper containing the note and agreement was lodged in the hands of *C.*, who, in case *A.* failed to do the acts by the time stipulated, was to deliver the note to *B.*, and *A.* having failed to do the acts, *C.* separated the note from the agreement, and delivered it to *B.*, who transferred it by endorsement to *D.*; held that an action might be maintained in the name of *D.*, the endorsee.

A promissory note accepted in satisfaction of a breach of covenants, is a bar to any future action on the covenants, although no release of such covenants be executed at the time of giving the note.

This was an action of assumpsit on a note dated February 28, 1816, for \$428 57, payable to *David Fogg*, or order, on

Hodgdon  
vs.  
Hodgdon.

(1) 6 John.  
283. Watson  
vs. Fuller