

Hanover  
vs.  
Eaton et al.

The next question is, did the selectmen in this instance intend to bind the town? They sign the contract as selectmen, and state in it that they act in behalf of the town; and we entertain no doubt, that the understanding of both parties was, that the town of *Weare* should be bound. It follows, that these defendants are not liable.

*Verdict set aside, and plaintiffs nonsuit.*



STRAFFORD, FEBRUARY TERM, 1824.



SIMON DOW *et al.* vs. JOHN DREW.

It is not illegal to receive compound interest for the giving day of payment of money.

ASSUMPSIT, for money had and received.

The cause was tried here, at September term, 1823, upon the general issue; when it appeared in evidence, that the defendant, on the 25th December, 1815, loaned to the plaintiffs \$400, for which he received their promissory note, payable in five years, with interest. That on the 13th November, 1821, the plaintiffs paid the defendant \$200; and on the 5th November, 1822, \$386 02, and took up the note. When the note was taken up, the defendant insisted upon being allowed compound interest, to which the plaintiffs objected; but eventually paid the amount of the note, and compound interest. This action was brought to recover back the sum paid above simple interest.

A verdict was taken for the defendant, subject to the opinion of the court upon the foregoing case.

*Eastman*, for the plaintiff.

*J. H. Woodman*, for the defendant.

RICHARDSON, C. J. The question in this case is, whether, when compound interest has been paid voluntarily for a loan of money, an action can be maintained to recover back the amount paid above simple interest?

On the part of the plaintiffs, it is contended, that the action may be maintained on the ground, that the receiving of compound interest is illegal.

It is true, that courts do not in general allow compound interest. 17 *Mass. Rep.* 417, *Dean vs. Williams*.—1 *Binney* 165.—1 *John.* 137.

Dow et a.  
vs.  
Drew.

But it is very clear, that they do not refuse to allow it, because it is illegal; for in many cases, where it is reserved by the contract of the parties, they do allow it. 1 *N. H. Rep.* 179, *Pierce vs. Row*.—2 *Mass. Rep.* 568.—4 *D. & E.* 613, *LeGrange vs. Hamilton*.—2 *H. Bl.* 144, *S. C.*—2 *Ves. Jun.* 15 *Morgan vs. Mather*.—8 *Mass. Rep.* 455.—1 *Peere Williams* 652, *Brown vs. Barkham*.—*Ord on Usury*, 36.

We are, therefore, of opinion, that the action cannot be supported on this ground.

*Judgment on the verdict.*

FRANCIS COGSWELL AND ELIZABETH, HIS WIFE,

vs.

LYDIA TIBBETTS.

A wife does not forfeit her right of dower by committing adultery, unless she elopes with the adulterer.

THIS was a writ of dower, in which the said *Francis* and *Elizabeth*, in her right, demanded dower in certain real estate in Dover, whereof *John G. Tibbetts*, late the husband of the said *Elizabeth*, was seized during the coverture.

The defendant pleaded in bar, “ that the said *Elizabeth* “ heretofore, and in the life time of the said *J. G. T.* and “ during her coverture with, and while she was the wife of “ the said *J. G. T.* to wit, on the 10th June, 1819, at Dover “ aforesaid, of her own accord, and without the license or “ consent, and against the will of the said *J. G. T.* and in “ the time when the said *J. G. T.* was on a voyage to Eu- “ rope, committed the crime of adultery, with the said “ *Francis Cogswell*, and thereupon, then and there, and con- “ tinually thereafterwards lived in adultery with the said “ *Francis*, during the whole life of the said *J. G. T.* to “ wit, at Dover aforesaid—and the said *Lydia*, further in “ fact, says, that the said *J. G. T.* in his life time, was