

right and interest, or changes the ownership in the property, is an assignment *pro tanto* of the property itself, because it was in their possession before, and that could not and would not be changed unless one sold out his whole interest in it to a third person; then there would need to be a change of possession. The fact that here were trustee processes served before the money was paid could not change the ownership of the money, but it will be held on the trustee process, just according to the equitable title, the real ownership of it, at the time the process was served. The authorities cited sustain the same view.

The creditors of the firm hold the funds of the firm to pay their debts in preference to the individual creditors of either partner, whether their attachments are first or not, until the partnership debts are paid.

Case discharged.

ORDWAY v. HAYNES.

The plaintiff recovered judgment against the defendant, who paid the amount of said judgment and reviewed the action, and upon review succeeded in reversing the original verdict, and obtained a verdict in his favor. When the judgment in the action of review is rendered, it should be for the whole amount paid in the first judgment, and interest thereon from the time of payment to the time of the judgment in review.

This was a review of an action on the case brought by Richard M. Ordway against Dr. Timothy Haynes, for alleged malpractice as a physician and surgeon. The original action was entered in court at the October term, 1864, and the same was tried by the jury at the October term, 1866, and a verdict was rendered for Ordway in the sum of two thousand and ninety-one dollars and thirty-six cents; upon which verdict a judgment was rendered at the said October term, 1866, for the said sum of two thousand and ninety-one dollars and thirty-six cents damages, and one hundred and thirty-four dollars and fifty cents costs of court, which said sums were paid by said Haynes on the eleventh day of December, 1866. On November 28, A. D. 1866, a writ of review was duly sued out by said Haynes, which was entered in court at the April term, 1867. This said action in review was tried by the jury at the April term of said court, 1869, and a verdict was rendered by the jury for said Ordway for the sum of six hundred and eighty-seven dollars and fifty cents. Upon exceptions taken at said last named trial said verdict was set aside, and said action in review was again tried by the jury at the April term, 1871, of said court, when a verdict was rendered for said Haynes, totally reversing the

former verdict rendered against him, as aforesaid, in the trial of the original action.

When the judgment in said last named action was being made up, counsel for Haynes moved that there be added to the sum in damages, for which execution was to be taken out against said Ordway, interest on the amount of damages paid by said Haynes on the former verdict, from the time of said payment to the date of judgment rendered in said writ of review as aforesaid. The court *pro forma* ruled that interest be allowed as claimed, and said Ordway excepted.

The questions of law were reserved.

George, Sanborn & Clark, for the plaintiff.

Tappan & Mugridge, for the defendant.

SARGENT, C. J. The only question before the court in this case is, whether Dr. Haynes, who, upon the trial of the review, succeeded in totally reversing the judgment for \$2,091.36 damages, which was rendered against him on the trial of the original action, is entitled to have interest on that sum, from the time he paid it, added to it in making up the final judgment in his favor against Ordway in the action of review, according to the motion of the counsel for the plaintiff in review made at the trial.

We understand that the doctrine of the decision in *Shepard v. Hatch*, 54 N. H. 96, is broad enough to cover this case, and that, in accordance with that decision, interest should be allowed on the sum paid upon the first judgment in making up the judgment for the plaintiff in review.

Exceptions overruled.

MARSTON & A. v. DURGIN.

In a voluntary association, where the plaintiffs were proved to own fourteen shares out of one hundred, and claimed to own many more, and the evidence tended to show that the defendant owned seventy-seven shares, and there was no evidence that anybody else owned any of the shares except these parties, the court will grant an injunction in behalf of the plaintiffs against the defendant to prevent his removing the building of the association from their land, or converting it to a purpose different from the original purpose and object of the association, without the consent in writing of the plaintiffs, or until the court shall permit him thus to remove or use said building, in some proceeding to which said association shall be a party.

Where the plaintiffs' right is settled or proved, there is no need of a