

*George*, for the defendants.

*Burns*, for the state.

DOE, C. J. "All suits or prosecutions founded upon any penal statute, which are wholly or in part for the use of the prosecutor, shall be brought within one year; and all other suits and prosecutions thereon within two years after the commission of the offence, unless otherwise specially provided." Gen. St., c. 248, s. 10; Rev. St., c. 211, s. 9; Act of Jan. 26, 1790. This limitation applies not only to actions of debt on penal statutes (*Pike v. Madbury*, 12 N. H. 262, 264), but also to indictments on such statutes, wholly or in part for the benefit of the prosecutor. *State v. Robinson*, 29 N. H. 274, 276; *State v. Hunkins*, 43 N. H. 557. From 1850, when the act was passed on which this indictment is founded, to 1867, when the general statute of limitations for criminal cases (Gen. St., c. 242, s. 8) was introduced, the limitation of one and two years applied to cases of this kind. And it does not appear that the general act of 1867 was intended to take this class of cases out of the operation of the limitation to which they had been subject seventeen years.

*Indictment quashed.*

STANLEY and BINGHAM, JJ., did not sit.

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CHASE & CO. v. BEAN.

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An action at law cannot be maintained by copartners to recover a debt which has been discharged by one of them, and paid by a set-off of his separate debt with his assent, when the defendant acted in good faith.

ASSUMPSIT, by C. H. Chase and S. H. Chase, partners, for goods sold. After the sale of the plaintiffs' goods to the defendant, C. H. Chase and the defendant agreed that \$150 of the price should be paid by the defendant's allowing that sum in payment of a debt of that amount due to him from C. H. Chase: and that agreement was executed, the defendant acting in good faith.

*Osgood* and *L. W. Clark*, for the plaintiffs.

*Smith* and *Andrews*, for the defendant.

DOE, C. J. An action at law cannot be maintained by copartners to recover a debt which has been discharged by one of them, and paid by a set-off of his separate debt with his assent, when the defendant

acted in good faith. *Homer v. Wood*, 11 Cush. 62; *Williams v. Brimhall*, 13 Gray 462; *Tay v. Ladd*, 15 Gray 296; *Greeley v. Wyeth*, 10 N. H. 15.

*Case discharged.*

BINGHAM, J., did not sit.

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WOODS v. MILFORD F. C. SAVINGS INSTITUTION.

A depository of money, who, having been charged as trustee therefor in a suit against the depositor's guardian for the depositor's board, has been compelled by legal process to pay the money in satisfaction of the judgment rendered in that suit, is not liable for the same money to the depositor after the guardianship is revoked.

ASSUMPSIT, against a savings bank for the plaintiff's deposit, which the bank had been compelled by legal process to pay in satisfaction of judgments rendered in suits (for the plaintiff's board) in which the plaintiff's guardian was defendant and the bank was trustee. The guardianship being now revoked, the plaintiff brings this action, and claims that he had no notice of those suits, and that the bank should not have been charged for his money as trustee of his guardian. The facts were found by a referee.

*Bailey & Cutter*, for the plaintiff, cited *Forster v. Fuller*, 6 Mass. 58; *Jones v. Brewer*, 1 Pick. 314; *Tenney v. Evans*, 14 N. H. 343; 1 Parsons Con. 116; *Tobin v. Addison*, 2 Strob. 3; *Raymond v. Sawyer*, 37 Me. 406; *Thacher v. Dinsmore*, 5 Mass. 301; *Morris v. Garrison*, 27 Pa. 226; *Stevenson v. Bruce*, 10 Ind. 397.

*Wadleigh & Wallace*, for the defendants.

DOE, C. J. The plaintiff, by his guardian, had notice of the trustee suits. The judgments have not been reversed or vacated; the property has not been restored to the defendants, and the defendants are in no fault. If the defendants should not have been charged as trustee, they are not, on that account, liable for property which the law has taken from them and appropriated to the payment of the plaintiff's board, in suits against the plaintiff's guardian.

*Judgment for the defendants.*

BINGHAM, J., did not sit.