

for some purposes is regarded as a demand. *McIlvaine v. Wilkins*, 12 N. H. 474, 480, 482; *Lancers v. Lovering*, 30 N. H. 511.

A ground upon which the jury is allowed, in the instances named, to give interest as damages, is stated by Lord MANSFIELD, in *Eddowes v. Hopkins*, Douglass 376, to be "long delay, under vexatious and oppressive circumstances."

In actions of trespass and trover for personal property, the damages being unliquidated, the ordinary rule of damages is the value of the property at the time of the taking or conversion, with interest. *Felton v. Fuller*, 35 N. H. 226, 229; *Adams v. Blodgett*, 47 N. H. 219.

The reason for allowing the jury to add interest is more satisfactory in cases of liquidated than unliquidated damages. In the first it is for the detention of money due, while in the latter it is the theory of the law that nothing is due till the damages are liquidated. Still an analogy exists between the two, in this, that the right to recover unliquidated damages accrues at the time the injury is done, and the damages are assessed for the injury as then received; and if the wrongdoer causes long and vexatious delay, and the jury cannot add interest as damages for the delay, as is done in cases of liquidated damages, injustice is the result.

The question of damages was submitted to the jury in this case. They were instructed that if they found certain facts, they would not allow interest; otherwise, they might. The instructions were, in substance, that if the defendant did not occasion the delay, but did all that was required to make amends without delay, and the fault was that of the plaintiff, he would not be entitled to interest as damages. This is the rule in this state in cases of liquidated damages. If the detention occurs through the fault of the creditor, and not that of the debtor, no interest is allowed. *Heywood v. Hartshorn*, 55 N. H. 476; *Otis v. Barton*, 10 N. H. 433; *Goff v. Rehoboth*, 2 Cush. 475; *Bank v. Bank*, 5 Pick. 106.

We think that in actions of tort the same rule may generally be applied, and that ordinarily the right to interest may be made to depend upon the cause of the delay, as was done in this case. *Walrath v. Redfield*, 18 N. Y. 457, 462; *Sedgwick on Dam.* 385; *Parrott v. Ice Co.*, 46 N. Y. 361, 369; *Schwerin v. McKie*, 51 N. Y. 180, 187.

*Judgment on the verdict.*

CLARK, J., did not sit: the others concurred.

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MERRIMACK.

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CHANDLER v. GOODRICH.

A judgment is not satisfied by a deputy of the sheriff selling, on execution, the debtor's property to the debtor, on credit, in violation of an order to sell for cash.

A sheriff, who has been compelled to compensate the creditor for such neglect of the deputy, may, as plaintiff in interest, maintain an action on the unsatisfied judgment orally assigned to him by the creditor.

DEBT, on a judgment on which an execution was issued. Facts found by a referee. The execution was delivered to a deputy of the sheriff, with an order to levy it on certain hay of the defendant, and to sell the hay for cash. The deputy sold the hay on credit to the defendant, who has not paid for it. The plaintiff sued the sheriff for the neglect of the deputy, and recovered full damages, which the sheriff paid. The plaintiff made an oral assignment of his first judgment to the sheriff, who is the plaintiff in interest.

*Mugridge*, for the plaintiff in interest.

The execution was not satisfied. *Churchill v. Warren*, 2 N. H. 298; *Folsom v. Chesley*, 2 N. H. 432; *Mickles v. Haskin*, 11 Wend. 125; *Green v. Burke*, 23 Wend. 488; *Ostrander v. Walter*, 2 Hill 329; *People v. Hopson*, 1 Denio 574, 578; *Peck v. Tiffany*, 2 N. Y. 451; *U. S. v. Dashiell*, 3 Wall. 688; *Whiting v. Beebe*, 12 Ark. 421; *Smith v. Hughes*, 24 Ill. 277; *French v. Snyder*, 30 Ill. 343; *Cooley v. Harper*, 4 Ind. 454.

This action can be maintained by the plaintiff in interest, who has been compelled to satisfy the judgment. *Allen v. Holden*, 9 Mass. 133; *Smith v. Alexander*, 4 Sneed (Tenn.) 482.

*Greene*, for the defendant.

DOE, C. J. The defendant did not lose his property by the nominal levy. The title was not changed. The sale of his property to him on credit operated practically as an abandonment of the levy at his request, in consideration of his promise to pay the debt to the deputy.

*Judgment for the plaintiff.*

FOSTER, J., did not sit: the others concurred.

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ROLFE v. WOOSTER.

A note, paid in fact, is not upheld as a subsisting debt by a legal fiction of equitable assignment when there is no ground of justice to support the fiction.

ASSUMPSIT, on a note for \$300, dated April 5, 1873, signed by the defendant, payable to L. or order on demand, and endorsed by L. with-