

Pettingill
v.
Rideout.

We are by no means satisfied that the rule is of any practical use in any country. But however that may be, we are very well satisfied that the people of this state want no additional stimulants to prosecute offenders. Rogues are almost the only game our people have to pursue, and they are by no means backward in that chase. We do not believe that if the civil action and the criminal prosecution go forward together, the public justice will sustain any detriment whatever from that circumstance.

At all events, there seems to us to be no sound reason why the party injured should not commence his action before the conviction or acquittal of the offender. It will be enough if he is compelled to wait for a trial in his cause, until the prosecution in behalf of the state is brought to a close. Whether even that is expedient, it will be time enough to settle, when the question arises.


To compel the injured party to wait until the prosecution for the offence is ended before he can commence an action must be, as is very well known, in most cases to deny all remedy.

We are, therefore, clearly of opinion, that it is no objection to this action that it was commenced before conviction.

Judgment on the verdict.

THE TOWN OF HUDSON *versus* JAMES TENNEY
and others.

In an action upon a bond given by a collector of taxes, in order to make him liable for interest, it must appear that he has made use of the money collected, or unreasonably neglected to pay it over.

In debt upon a bond, if the condition is performed after the commencement of the action, so that upon a hearing in equity execution is awarded only for nominal damages, still the plaintiff is entitled to full costs. 

THIS was an action of debt upon a bond, the condition of which was, that Tenney should faithfully perform the duty of collector of taxes in Hudson for the year 1829.

Hudson
v.
Tenney, et a.

The defendants were defaulted and upon a hearing in equity, it appeared that Tenney had not collected and paid over the taxes, according to the directions in his warrant, but that since the commencement of the suit he had paid over the whole amount committed to him to collect.

C. H. and C. G. Atherton, for the defendants, contended, that as the principal sums had all been paid over, the plaintiffs could be allowed no interest for any detention of the money in the hands of the collector. 2 N. H. Rep. 169 *Hodgdon v. Hodgdon*.

They also contended, that as nominal damages only could be recovered, the costs ought to be limited.

Farley and Abbot, for the plaintiffs, contended, that collectors were bound to collect and pay over all taxes committed to them, according to the directions in their warrants, and that they were chargeable with interest upon all sums not paid over at the times fixed in the warrants.

RICHARDSON, C. J. To entitle the town to recover interest, in this case, it must appear either that the collector made use of the money, or that having collected the money he unreasonably neglected to pay it over. We are not aware that interest can be allowed in any other cases upon such a bond. 5 B. & P. 205, note; 2 Starkie's Ev. 787.

Nothing is disclosed, in this case, which shows, that the town is entitled to any interest.

There is no ground for limiting the costs in this case. When the suit was commenced, a considerable part of the taxes remained unpaid.

Execution awarded for \$1, and costs.