

Hillsborough, }
 June, 1899. }

ROBINSON v. BURKE.

Damages recovered for the conversion of property exempt from attachment may be reached by trustee process in the hands of the judgment debtor.

MOTION, by Gleason, for stay of execution in *Robinson v. Burke*. After the plaintiff had recovered judgment in this action, which is trover against a deputy sheriff for attaching goods which were exempt from attachment, Gleason, a creditor of Robinson and not a party to any prior proceedings, sued him, summoned Burke as trustee, and moved for stay of execution until his action against Robinson should be determined. Robinson opposed this motion upon the ground that the verdict so far partook of the nature of the property converted as to be itself exempt from attachment. Execution was stayed, and Robinson excepted.

David W. Perkins, for Robinson.

Andrews & Andrews, for Burke.

William W. Forbes, for Gleason.

YOUNG, J. All property which can be taken on execution can be attached on mesne process. P. S., c. 220, s. 1. At common law, all the debtor's property, with a few trifling exceptions not material in this case, could be taken on execution, and it follows that all of his property which is not exempted by statute can be taken now. Damages recovered for the conversion of property exempt from attachment are not themselves exempted by statute (P. S., c. 138, s. 1; *Ib.*, c. 220, s. 2; *Ib.*, c. 245, s. 20), and can be reached in the hands of the judgment debtor by trustee process unless they so far partake of the nature of such property as to be exempt for that reason. Generally, the proceeds of such property are not exempt from attachment. *Morse v. Towns*, 45 N. H. 185; *Manchester v. Burns*, 45 N. H. 482, 488; *Wooster v. Page*, 54 N. H. 125; *Currier v. Sutherland*, 54 N. H. 475, 487; *Hall v. Johnson*, 64 N. H. 481; *Brookfield v. Sawyer*, 68 N. H. 406. This case is no exception, for no good reason can be given why one rule should be applied to damages recovered for the conversion by third parties of property exempt from attachment, and another rule to damages recovered upon a policy of insurance covering such property. *Wooster v. Page*, *supra*.

The reason why the plaintiff in the original action against Robinson cannot take the proceeds of this judgment to satisfy his debt, is that no one will be allowed to profit by his own wrong and do by indirection that which he could not do in a direct proceeding, and not because the judgment so far partakes of the nature of the property as to be itself exempt from attachment.

Exception overruled.

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

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70	3
72	200
72	298

PROCTOR & a. v. WHITE MOUNTAIN FREEZER CO.

70	3
174	394

Specific instances of negligence, of the same general character as the acts complained of, may be put in evidence to show negligence at a particular time.

Whether a specific instance of negligence sought to be put in evidence is too remote in point of time, is a question of fact determinable at the trial term.

CASE, for negligently setting fire to the plaintiffs' storehouse. Trial by jury, and verdict for the plaintiffs.

The plaintiffs' evidence tended to prove that the defendants operated a furnace for melting iron on a lot adjoining the storehouse and fifty-four feet southeasterly therefrom; that when using the furnace for melting, the defendants built a fire in it of wood and coke, which was kept up under the natural draft of the stack until the fire became white hot, when they threw in the iron and put on the forced draft called a blast, which was continued until the iron was melted; that a constantly increasing volume of sparks came from the furnace during the whole of the fire, and that the only difference as to throwing off sparks was that more were thrown off under the forced than under the natural draft; that in either case, the sparks were thrown only a few feet above the top of the stack, and that the wind would carry them as far from one kind of fire as it would from the other.

Occasionally it was necessary to line up this furnace with fire-brick. This necessitated a thorough drying out of the furnace before it could be again used, which was done by continuing a wood fire under the natural draft until the furnace became very hot. Sparks had frequently been carried by the wind upon the