

## CHASE v. MANHARDT.

On a motion to dissolve an injunction on the coming in of the answer, the facts only as set forth in the answer are to be considered as established, not the opinions or reasoning of the party; and therefore, where a defendant insisted upon a claim to a certain amount, according to certain proceedings which, of themselves, showed that it could not have amounted to so much; it was held, that the facts so shown by the defendant himself could not be overruled by any thing he had alleged as being, in his opinion, a correct conclusion of law from them.

Where there is an agreement to allow for payments, or a verdict has been taken by surprise or mistake, it furnishes a ground for the interference of a court of equity; but if the mistake can be corrected in this court, a new trial at law will not be ordered.

Where it is admitted by the answer, that there still remains a dispute between the parties, the injunction is always continued until the final hearing.

Where in a contract between A and B alone, A stipulated to pay a sum of money to B, upon condition, that he made an assignment of certain property to A, and delivered the assignment to C, before a certain day; it was held, that A was to be considered as the contracting party, who alone could dispense with the condition.

Where a party bound himself to secure the payment of money, by giving his notes payable so many days after date, but failed to do so; it was held, that the debt should bear interest from the time the notes, had they been given, would have fallen due.

Interest is paid for the use or forbearance of money; and therefore, where a debtor is prevented by law from making payment, or cannot pay, because of any public calamity, such as that of a public war, he will not be charged with interest.

But an attachment laid in his hands, as a garnishee, does not prevent him from bringing the money into court so as to stop interest; and therefore, if, as garnishee, he contests the plaintiff's claim, either in his own right, or as an ally of the defendant, he will be charged with interest.

If a creditor, in any manner, receives only the principal of his debt, so as not to relinquish his claim to the interest then due, he may afterwards recover the interest as if it were a part of the principal.

In some cases, a party may be relieved from the consequences of a fraud which has been practised upon a third person.

This bill was filed on the 30th of December, 1818, by *Samuel Chase* against *Christian L. Manhardt*, and others; in which it is alleged, that the defendant *Manhardt* had obtained a judgment against *James Bryden* for a large sum of money, upon which he had sued out an attachment, and had it laid in the hands of this plaintiff *Chase*, as garnishee of the defendant *Bryden*; upon which attachment *Manhardt* had, by surprise and fraud, obtained a judgment of condemnation against the plaintiff for an amount which he did not owe to *Bryden*. Whereupon the plaintiff prayed for an injunction to stay execution upon the judgment, and for such relief as the nature of his case required. After which the plaintiff filed an injunction bond, when, on the 16th of January, 1819, an