by which the defendants covenanted to pay to the plaintiff £4,000 at the expiration of six months after due proof of the death of R. C. Burton. The cause was tried before Bayley, J., at the assizes for the county of York, and the principal question was, whether R. C. Burton's life was an insurable life at the time when the policy was effected. The learned Judge summed up the evidence to the jury with reference to that question, no point having been then made as to interest; but when the jury returned a general verdict for the plaintiff, his counsel then claimed to have interest allowed upon the principal sum insured from the time when that sum became due. It was stated in the affidavits that R. C. Burton died in April, 1821, and that due proof of his death was given to the defendants, so that the principal sum insured became due on the 6th of November, 1822, and that the interest upon that sum, to the first day of Michaelmas Term, 1823, amounted to £200. A rule nisi having been obtained for increasing the damages by that sum, cause was shown.

Abbott, C. J.—"It is now established as a general principle that interest is allowed by law only upon mercantile securities, or in those cases where there has been an express promise to pay interest, or where such promise is to be implied from the usage of trade or other circumstances. It is of importance that this rule should be adhered to; and if we were to hold that interest was payable in this case, the application of the general rule might be brought into discussion in many others. Interest was not claimed by the plaintiff's counsel in this case until the Judge had concluded his address to the jury upon the principal question for their consideration, and they had pronounced their verdict upon that question in favor of the plaintiff. It was then contended, for the first time, that the plaintiff was entitled to have interest allowed him upon the principal sum secured by the policy from the time when it had become payable, and that point was reserved by the learned Judge. The only question upon the present rule is, whether the jury ought to have been told that they were bound by law to give the plaintiff interest from that time; for if it was a matter for their discretion only, and it was not properly submitted to them, there may be a ground for granting a new trial, but not for increasing the damages. Inasmuch as the money recovered in this case was not due by virtue of a mercantile instrument, and as there was no contract, express or implied, on the part of the defendant to pay interest, I cannot say that the jury ought to have been told to give interest."

Bayley, J.—"I am of the same opinion. It was once the opinion that money lent carried interest, and in *Calton* v. *Bragg*[1] it was so contended, on the ground that the lender would otherwise, for the accommodation of the borrower, lose the benefit which he might make of his capital, and that the lender ought in equity to be put in the same situation as if he had applied his principal to his own use. But this Court held that interest was not due by law for money lent without a contract for it expressed, or to be implied from the usage of trade, or from special circumstances. Now if interest be not due for money lent, which is to be repaid either upon demand or at a given time, it follows, that it is not due for money payable within a certain time after due proof of the happening of a particular event. The circumstance of the money having become due in this case by virtue of a contract under seal, does not make any difference. If it were the intention of the parties that the principal sum should bear interest from the time when it became due, that might have been expressly provided for in the deed; but not having been done, the law will not imply a contract on the part of the defendants to pay interest, and consequently the jury ought not to have been directed to give interest."

Holroyd, J.—"I think that the Judge would not have been warranted in directing the jury to give interest in this case. It is clearly established by the later authorities, that unless interest is payable by the consent of the parties, express, or implied from the usage of trade, (as in the case of bills of exchange,) or other circumstances, it is not due by common law. In *De Haviland* v. *Bowerbank*,[2] Lord Ellenborough was of opin-

[1] 15 East, 224.
[2] 1 Camp. 50.