

similar character to that which is caused by the utterance of a slander throwing doubt upon his solvency. In both cases he is allowed to recover substantial damages without proving any special damage. But a clergyman or other non-trader who has opened a savings bank account with a bank, and who goes to withdraw a part of it, is put, by the refusal of the banker, to no greater or other loss than is experienced by any ordinary creditor of any ordinary debtor when the debtor answers the creditor's demand by saying that he cannot or he will not pay. The damages in the one case as in the other must be limited to the interest on the money.

The defendants, however, admittedly had in their hands on January 4th, 1894, when the plaintiff demanded it, a sum of \$320.38 beyond the \$236.96 at which the defendants' costs of appeal in the other action had been taxed. It is true that they had judgment against the plaintiff for a further sum for costs in the Divisional Court which had not at that time been taxed, but they had no right at the time to set off these costs against the plaintiff's demand, because the amount had not then been ascertained, and they had no right at the time of the trial to set them off because payment of them had after taxation been suspended by the giving of security in the Court of Appeal for their payment. The plaintiff then when he made his demand, when he issued his writ, and when the action came on for trial, was entitled to payment of this \$320.38, with interest from the time of his demand on January 4th, 1894. The defendants might, upon his making his demand, have required fifteen days' notice, but they did not do so—their refusal to pay was put upon other grounds, and as they have only reserved in their conditions a right to require it, which they have not exercised, they are in the same position as if they had reserved no such right. At the date when the defendants paid into Court \$322.21, namely, on February 12th, 1894, as being in full satisfaction of the plaintiff's deposit and interest, he was entitled to \$320.38, with interest from January 4th, 1894, at 6 per cent., that is thirty-nine days, and the interest would amount to \$2.05, making the plaintiff's proper claim \$322.43, or 22c. more than the amount paid in. The plaintiff did not take out the amount, but went on with his action. Both parties are standing on their strict rights, and the defendants cannot complain if the plaintiff has refused to take an offer which is a tittle less than he was entitled to recover.

I think the plaintiff should recover \$320.38, with interest from January 4th, 1894, and his costs of an action to recover that sum, and that the claim to unliquidated damages should be dismissed with costs, which are to be set off. Money in Court to be applied *pro tanto* in payment of plaintiff's claim.