

Currier of the cost of cutting, making, drawing, and transporting the timber, and appropriate the fruit of such their cost to his own use.

The replevin bond, after it was assigned by the sheriff to Batson and Currier, was, in my opinion, a debt and a chose in action assignable at law by any form of writing: that it was properly assigned to the plaintiffs: that at the time of action brought they had the beneficial interest in it; and that they had the right to receive the moneys thereby secured, and to give an effectual discharge for the same; and that the action was properly brought in their name.

*Hostawser v. Robinson*, 23 C. P. 350, is obviously distinguishable, and does not affect the present case.

Under the plea in the replevin suit denying the property to be the plaintiffs, and the finding upon that plea, the then defendants were entitled to a judgment for a return of the 175 pieces of timber, and the judgment ought to have been so entered; and as the then plaintiff, the now defendant, entered that judgment as it is entered, we might, if it stood in the present plaintiffs' way in their action upon the replevin bond, direct it to be amended now; but I do not think that this is required.

One of the conditions of the replevin bond, upon which a breach has been assigned, is, that the now defendant should pay such damages as the said Benjamin Batson and Joseph Merrill Currier should sustain by the issuing of the writ of replevin, if the now defendant should fail to recover judgment in the suit.

The now defendant did fail to recover judgment in the replevin suit as to these 175 pieces of timber, and this condition was therefore broken, and Batson and Currier by reason thereof became entitled to recover such damages as they sustained in respect of these pieces of timber by the issuing of the writ of replevin.

The words, "by the issuing of the writ of replevin," I take to mean by the taking of the proceedings in replevin, and by the taking of the proceedings in replevin