
 The United States v. McLemore.

down by Lord Ellenborough, in *Pritt v. Fairclough*, 3 Camp. R. 305, as to the rules of evidence, was adopted, namely, "That they must expand according to the exigencies of society." And in the *Bank of Columbia v. Lawrence*, 1 Peters, 583, speaking of a rule as to diligence, Thompson, J., says, — "For the sake of general convenience it has been found necessary to enlarge this rule." 4

But all I ask here is to go as far as the existing rules of evidence seem to justify, and let reasonable inferences and presumptions be made by the jury from all that is stated in the protest, and thus decide whether the note was not probably present when the demand was made.

 THE UNITED STATES, APPELLANT, v. JOHN C. McLEMORE.

Although a Circuit Court, sitting as a court of law, may direct credits to be given on a judgment in favor of the United States, and consequently examine the grounds on which such an entry is claimed, and may direct the execution to be stayed until such an investigation shall be made, yet it cannot ascertain a bill, on the equity side, praying that the United States may be perpetually enjoined from proceeding upon such judgment.

Nor can a decree or judgment be entered against the government for costs.

THIS was an appeal from the Circuit Court of the United States for the District of Middle Tennessee, sitting as a court of equity.

It is unnecessary to recite all the circumstances which led to the filing of the bill in equity, as it was dismissed for the want of jurisdiction in the Circuit Court. The facts in the case are summarily stated in the opinion of the court. It is proper, however, to exhibit the account to which the opinion of Mr. Justice Wayne refers: —

THE UNITED STATES OF AMERICA v. SEARCY'S EXECUTORS AND SECURITIES.

DR. *Robert Searcy, late District Paymaster, in account with the U. S.*

	To amount of judgment, 21st June, 1827, . . .	\$ 17,023 41
	" interest till 20th Sept., 1843, 16 years,	
	3 months, 29 days, . . .	16,597 80
		<u>\$ 33,626 21</u>
1828, May 3,	Cr. by payment to Tho. H. Fletcher, . . .	\$ 1,233 62
	" interest till 20th Sept., 1843, 15 years,	
	4 months, 17 days, . . .	1,184 00
" July 8,	" payment to Tho. H. Fletcher, . . .	519 25
	" interest till 20th Sept., 1843, 15 years,	
	2 months, 12 days, . . .	473 33
" July 18,	" payment to Tho. H. Fletcher, . . .	1,940 68
	" interest till 20th Sept., 1843, 15 years,	
	2 months, 2 days, . . .	1,767 05
" July 24,	" payment made to Tho. H. Fletcher, . . .	498 33
	" interest till 20th Sept., 1843, 15 years,	
	1 month, 26 days, . . .	455 34
	Amounts carried forward, . . .	<u>\$ 8,120 60</u>
		<u>33,626 21</u>

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	Amounts brought forward,	\$ 8,120 60	33,626 21
1828, Oct. 28,	Cr. by payment made to Tho. H. Fletcher,	960 00	
	" interest till 20th Sept 1843, 14 years,		
	10 months, 22 days,	857 92	
" Nov. 10,	" payment made to Tho. H. Fletcher,	715 19	
	" interest till 20th Sept., 1843, 14 years,		
	10 months, 10 days,	637 54	
1829, Jan. 15,	" payment made to Tho. H. Fletcher,	304 60	
	" interest till 20th Sept., 1843, 14 years,		
	8 months, 5 days,	267 77	
" Jan. 24,	" payment made to Tho. H. Fletcher,	498 34	
	" interest till 20th Sept., 1843, 14 years,		
	7 months, 26 days,	437 91	
" Jan. 26,	" payment made to Tho. H. Fletcher,	286 67	
	" interest till 20th Sept., 1843, 14 years,		
	7 months, 24 days,	251 39	
" April 6,	" payment made to Tho. H. Fletcher,	1,273 76	
	" interest till 20th Sept., 1843, 14 years,		
	6 months, 14 days,	1,110 48	
" June 12,	" payment made to James Collinsworth,	1,163 50	
	" interest till 20th Sept., 1843, 14 years,		
	3 months, 8 days,	995 92	
" June 24,	" payment made to James Collinsworth,	1,027 75	
	" interest till 20th Sept., 1843, 14 years,		
	2 months, 26 days,	877 40	
" Oct. 22,	" payment made to James Collinsworth,	1,920 00	
	" interest till 20th Sept., 1843, 13 years,		
	10 months, 28 days,	1,602 56	
1831, Oct. 28,	" payment made to James Collinsworth,	200 00	
	" interest till 20th Sept., 1843, 11 years,		
	10 months, 22 days,	142 73	
1832, Jan. 1,	" payment made to James Collinsworth,	500 00	
	" interest till 20th Sept., 1843, 11 years,		
	8 months, 20 days,	351 67	
" Sept. 3,	" payment made to James Collinsworth,	1,669 49	
	" interest till 20th Sept., 1843, 11 years		
	and 17 days,	1,166 27	
1833, Jan. 1,	" payment made to James Collinsworth,	2,104 60	
	" interest till 20th Sept., 1843, 10 years,		
	8 months, 20 days,	1,351 00	
1834, Jan. 1,	" payment made to Collinsworth,	1,279 89	
	" interest till 20th Sept., 1843, 9 years, 8		
	months, 20 days,	756 08	
1833, Jan. 1,	" payment made to Collinsworth,	861 00	
	" interest till 20th Sept., 1843, 10 years,		
	8 months, 20 days,	553 91	
1839, Jan. 1,	" payment made to J. P. Grundy,	422 00	
	" interest till 20th Sept., 1843, 4 years,		
	8 months, 20 days,	119 58	
1831, Aug. 10,	" payment made to Collinsworth,	425 00	
	" interest till 20th Sept., 1843, 12 years,		
	1 month, 10 days,	308 84	
			\$ 35,521 27
	Amount overpaid,		\$ 1,895 06

The case was argued by *Mr. Mason* (Attorney-General), for the appellant, and by *Mr. Brinley* and *Mr. Eaton*, for the defendant.

Mr. Justice McLEAN delivered the opinion of the court.

This is an appeal from the decree of the Circuit Court of the United States, for the District of Middle Tennessee.

The United States v. McLemore.

The bill was filed by McLemore and Cantwell, surviving executor of Robert Searcy, deceased, and surviving executor of George M. Deoderick, deceased, representing that a judgment was obtained by the United States against the executors of Searcy, for the sum of seventeen thousand and twenty-eight dollars and forty-one cents. That various payments had been made on the judgment until the whole or nearly the whole had been paid. That the last execution on the judgment was issued the 10th of January, 1842, for a balance claimed on the judgment of two thousand eight hundred thirty-two dollars and thirty-seven cents. And they state that their payments were made to different persons named, who succeeded each other in the office of District Attorney of the United States for Middle Tennessee; and that by the absence and death of a part of them it is difficult to show the sums paid. That the money was principally collected by the district attorneys on notes handed them for collection, the proceeds of which, when received, were to be applied to the discharge of the judgment. That this arrangement was sanctioned by the treasury department. And the prayer of the bill is, that the judgment may be enjoined, &c.

The District Attorney of the United States answered the bill, and the matter of payments was referred to a master, who reported a balance against the United States, after paying the judgment. On this report, the district judge holding the Circuit Court decreed a perpetual injunction, and that the United States should pay the costs.

There was no jurisdiction of this case in the Circuit Court, as the government is not liable to be sued, except with its own consent, given by law. Nor can a decree or judgment be entered against the government for costs.

The Circuit Court, as a court of law, may direct credits to be given on the judgment, and having a right to order satisfaction to be entered on the judgment, consequently may examine the grounds on which such an entry is claimed, and may direct the execution to be stayed until such an investigation shall be made.

This bill is dismissed.

Mr. Justice WAYNE concurred in the decision of the case, but said it appeared in the record that a different mode of computing interest had been pursued from that which had been settled by this court. In *Livingston v. Story*, 13 Peters, 371, the court said: — “The correct rule, in general, is, that the creditor shall calculate interest whenever a payment is made. To this interest the payment is first to be applied; and if it exceed the interest due, the balance is to be applied to diminish the principal. If the payment fall short of the interest, the balance of interest is not to be added to the principal so as to produce interest. This rule is equally applicable, whether the debt be one which expressly draws

Zeller's Lessee v. Eckert et al.

interest, or on which interest is given in the name of damages." Nor is it to be considered, by any thing which the court has done upon the motion, that any sanction is given to any other mode of computing interest.

ZELLER'S LESSEE v. JACOB K. ECKERT AND OTHERS.

Under a will which devised land to the son of the testator, and provided that the widow should continue in possession and occupation of the premises until the son arrived at the age of fifteen years, she was entitled to their possession and enjoyment until the time when the child would have reached the age of fifteen if he had lived, although he died before that time.

Her possession, therefore, was not adverse to the heirs of the child, during that period.

Where the original possession by the holder of land is in privity with the title of the rightful owner, in order to enable such holder to avail himself of the statute of limitations, nothing short of an open and explicit disavowal and disclaimer of holding under that title, and assertion of title in himself brought home to the other party, will satisfy the law.

The burden of proof is on the holder to establish such a change in the character of the possession.

The statute does not begin to run until the possession becomes tortious and wrongful by the disloyal acts of the tenant, which must be open, continued, and notorious, so as to preclude all doubt as to the character of the holding, or the want of knowledge on the part of the owners.

In this case there was evidence enough given upon this point to authorize the court below to submit the question of adverse possession to the jury, and advise them that a foundation was laid upon which they might presume a grant for the purpose of quieting the title.

The whole charge of the judge to the jury is incorporated into this record. This mode of making up the error books is exceedingly inconvenient and embarrassing to the court, and is a departure from familiar and established practice.

So far as error is founded upon the bill of exceptions incorporated into the record, it lies only to exceptions taken at the trial, and to the ruling of the law by the judge, and to the admission or rejection of evidence. And only so much of the evidence as may be necessary to present the legal questions thus raised and noted should be carried into the bill of exceptions. All beyond serves to encumber and confuse the record, and to perplex and embarrass both court and counsel.

The earlier forms under the statute giving the bill of exceptions are models which it would be wise to consult and adhere to.

THIS was a writ of error to the Circuit Court of the United States for the Eastern District of Pennsylvania, to bring up for review certain instructions to the jury in an action of ejectment brought by the plaintiff in error against the defendants in error, and in which the latter obtained the verdict.

Frederick White was the owner of the premises in question, being part of a small tract of land situate in the county of Lancaster, Pennsylvania, of which he died seized in March, 1798, leaving a last will and testament by which he devised the said land in fee to Frederick White, Jr., his only child, who was then about four years of age. He also provided in the will that his widow should con-