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sum. In all cases where interest, not stipulated for by the terms of the contract, is given by way of damages, the sum demanded in the declaration is less than the sum for which judgment is rendered. The plaintiffs may not recover more, as principal, than the sum demanded as such in *the declaration; but the jury have a right to add interest, by way of [*441 damages, for the delay.

Some other objections have been suggested at the bar, such as, that the jury had no right, without evidence, to presume that there was no other note of Wood & Ebert, in order to help the misdescription; and that the case proved was of several liabilities of the defendants, which would not support a declaration on a joint contract. These questions have been fully argued by counsel, but are not presented by the record in such a shape as to enable the court to take cognisance of them.

Upon the whole, it is the opinion of the court, that the judgment ought to be affirmed, with costs.

Judgment affirmed.

MILLER'S Heirs v. McINTIRE and others.

Land-law of Kentucky.

Quære? Whether the compact of 1789, between Virginia and Kentucky, restrained the legislature of Kentucky, from prolonging the time for surveying one entry to the prejudice of another?

By the construction of the act of Kentucky of 1797, granting further time for making surveys, with a proviso, allowing to infants, &c., three years after their several disabilities are removed, to complete surveys on their entries; if any one or more of the joint-owners be under the disability of infancy, &c., it brings the entry within the saving of the proviso, as to all of the other owners.

APPEAL from the Circuit Court of Kentucky.

*March 3d, 1826. This cause was argued by *Sheffey*, for the ap- [*442 pellants; and by *Talbot*, for the respondents.

March 13th. MARSHALL, Ch. J., delivered the opinion of the court.— This is an appeal from a decree of the circuit court of the United States for the district of Kentucky, by which the bill of the plaintiffs was dismissed *pro forma*.

An original bill was filed by Miller's heirs, in the year 1808, to obtain from the defendants therein mentioned, the legal title to lands in their possession, to which the plaintiffs claimed the equitable right, under a prior entry. The decree made by the court, in that cause, against several of the defendants, was brought before this court by appeal, and in that case, the court determined in favor of the entry under which the title of the plaintiffs arose. (2 Wheat. 316.) An amended bill was filed in 1815, against the present defendants in error, who, in their answer, contend, among other things, that the title of the plaintiffs has been forfeited, by failing to make their survey within the time prescribed by the laws of Virginia; and that the compact between the two states restrained Kentucky from varying in any manner the laws by which titles originating anterior to the separation are to be governed.

Henry Miller, for whom the entry was made, died in March or April

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1796, having first made his last will in writing, by which he devised his
 *443] lands to be sold for the benefit of all his children, many of whom
 were minors.

The time allowed for making surveys, by the first law on that subject, had expired, but the time had been prolonged, first, by the legislature of Virginia, and afterwards, by that of Kentucky, until after the death of Miller, and the act of 1797, which gave still further time, contained a saving of the rights of infants. In April 1804, while the saving still existed, the survey was made.

In the case formerly decided in this court, it was determined, that Miller's heirs came within the saving of the act of 1797, but the compact between the two states was not then brought into view, and the counsel for the appellees insist, that it applies to this case, and restrains the legislature of Kentucky from prolonging the time for surveying one entry, to the prejudice of another. On this point, a difference of opinion exists among the judges. Some think, that a second entry is not authorized by the land law of Kentucky, and that no title can be acquired under it. A grant, therefore, that is founded on it, is totally void, and the grantee cannot hold the land under it, even after the original entry became forfeited. The land, on such forfeiture, became vacant, and it was competent to the legislature to grant it, by an original warrant, or to revive or to continue the right held under the first entry. Others are of opinion, that a subsequent entry is not absolutely void, but has been considered as a valid appropriation of the land,
 *444] unless it shall be encountered by a better title. That the removal or extinguishment of that better title, leaves the holder of a grant, founded on a junior entry, the true legal owner of the land it purports to convey. They think, the practice of the court, to direct the elder grantee to convey to the person claiming the equitable title, is strong evidence of the prevailing opinion, that a subsequent locator acquired a conditional interest, which might be ripened into title, by the failure of the person holding the original entry to proceed as directed by law. But they think also, that this mere possibility could not attach itself absolutely to the land, until it became vacant by the *laches* of the person who had made the first appropriation. Until such vacancy actually occurred, the power remained with the state to give further time to perfecting titles. Limitations of time, in this respect, were intended chiefly for the benefit of the state, since it was not the course of the government to tax unpatented lands. The state, therefore, might grant indulgences in this respect, without giving just cause of complaint to a person, whose interest, if he had any, was potential, not vested; was rather a pre-emption, to the exclusion of others subsequent to himself, than a positive acquisition which could in any manner interfere with the rights of the person who had made a previous appropriation. Without determining either of the points on which this difference exists, the court is of opinion, that Miller's heirs are within the saving of the act giving further time to
 *445] the owners of lands to survey the same, and for returning plats and certificates to the register's office, passed in the year 1797, and may maintain this suit, if no other objection exists to the title.

There seems to have been some confusion at the trial, respecting testimony, and from the manner in which the cause is brought up, the parties are placed under circumstances in this court which throw difficulties in the

Carnochan v. Christie.

way of the investigation of the title on its real merits. We do not think such a defence is made out by the defendants, as to justify an affirmance of the decree dismissing the bill; nor are we satisfied, that the state of the record is such as to enable this court safely to decree, that the defendants shall convey the lands they hold within the patent of the plaintiffs. The decree, therefore must be reversed, and the cause remanded to the circuit court, that further proceedings may be had therein, according to equity.

DECREE.—This cause came on, &c.: On consideration whereof, this court is of opinion, that the right of the plaintiffs was preserved by the act giving further time to the owners of the lands to survey the same, and for returning plats and certificates to the register's office, passed in the year 1797, and that the survey on which the patent was founded was made in time: This court doth, therefore, reverse the decree of the circuit court, dismissing the bill of the plaintiffs, and doth remand the cause to the said circuit court, that further proceedings may be had therein, according to equity.

*CARNOCHAN & MITCHEL v. CHRISTIE and another.

[*446]

Award.—Cross-bill.

An award must decide the whole matter submitted to the arbitrators; it must not extend to any matter not comprehended in the submission; and it must be certain, final and conclusive of the whole matter referred.²

Where the arbitrators determined that the plaintiffs should be entitled to a credit of a certain sum, on account of sales of lands to the defendant, provided "they shall grant, or cause to be granted, to the said W. C. (the defendant), a clear, unincumbered, and satisfactory title" to the lands, without limiting any time within which the title should be made: *Held*, that the award was void, as not being final and conclusive.

A court of equity either enforces an award as it is made, or sets it aside, if in any respect defective; but it is contrary to its practice, to confirm the award so far as it extends, and to supply omissions by decree of the court.

Where a bill is filed to set aside an agreement or conveyance, the conveyance cannot be established, without a cross-bill filed by the defendant.³

APPEAL from the Circuit Court of Georgia.

March 10th, 1826. This cause was argued by *Webster* and *Berrien*, for the appellants; (a) and by **Emmet* and *D. B. Ogden*, for the respondents. (b) [*447]

(a) They cited, as to the necessity of a cross-bill by the defendants, in order to establish the conveyances, 2 Madd. Ch. 329; 2 Atk. 133; 1 Ball. & Beat. 217; 2 Cox 78. As to the manner in which a court of equity acts upon an award, either by confirming it *in toto* or rejecting it, 1 Bro. C. C. 389; 3 Id. 163; 1 Ves. jr. 365; 2 Id. 22; 4 Bro. C. C. 117, 536. As to the necessity of the award extending to all the matters of reference, 7 East 81. As to the uncertainty and inconclusiveness of the award, 7 T. R. 69.

(b) To show that an award might be good in part, and void as to the residue, they cited 5 Wheat. 394; 3 Desauss. 11; 14 Johns. 36; Kyd on Awards 243, 261, and the cases there collected.

¹ For a further decision in this case, see 6 Pet. 61.

² De Groot v. United States, 5 Wall. 419.

³ The more modern course of proceeding is,

to dispense with the cross bill, and make the same decree upon the answer to the original bill, that would be made, if a cross-bill had been filed, if the defendant submits in his answer to