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The United States v. McLemore.

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*Lawrence*, 1 Pet., 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.”

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.

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

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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 entertain a bill, on the equity side, praying that the United States may be perpetually enjoined from proceeding upon such judgment.<sup>1</sup> Nor can a decree or judgment be entered against the government for costs.<sup>2</sup>

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:—

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

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*Robert Searcy, late District Paymaster, in account with the United States.*

Dr.

To amount of judgment, 21st June, 1827, . . .	\$17,028 41
“ interest till 20th Sept., 1843, 16 years, . . .	
3 months, 29 days, . . .	16,597 80
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	\$33,626 21

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<sup>1</sup> FOLLOWED. *Hill v. United States*, 9 How., 389. CITED. *Reeside v. Walker*, 11 How., 290; *United States v. Eckford*, 6 Wall., 488; *United States v. Lee*, 16 Otto, 207, 227; *The Elmira*, 16 Fed. Rep., 135; *Gorsuch v. Thomas*, 57 Md., 339. See *Bush v. United States*, 13 Fed. Rep., 627, 628. a. c., 8 Sawyer, 325, 326.

<sup>2</sup> S. P. *United States v. Barker*, 2 Wheat., 395; *The Antelope*, 12 Id., 546; *United States v. Hooe*, 3 Cranch, 73; *United States v. Boyd*, 5 How., 29. But that costs may be offset against the claim of the government, see *United States v. Ringgold*, 8 Pet., 150.

## The United States v. McLemore.

		Amount brought forward,	33,626 21
		Cr.	
1828, May 3,	By payment to Tho. H. Fletcher,	\$1,283 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,	1,766 05	
“ July 24,	“ payment made to Tho. H. Fletcher,	498 33	
	“ interest till 20th Sept., 1843, 15 years,		
	1 month, 26 days,	455 34	
“ Oct. 28,	“ 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 Jas. Collinsworth,	1,163 50	
	“ interest till 20th Sept., 1843, 14 years,		
	3 months, 8 days,	995 92	
“ June 24,	“ payment made to Jas. Collinsworth,	1,027 75	
	“ interest till 20th Sept., 1843, 14 years,		
	2 months, 26 days,	877 40	
“ Oct. 22,	“ payment made to Jas. Collinsworth,	1,920 00	
	“ interest till 20th Sept., 1843, 13 years,		
	10 months, 28 days,	1,602 56	
1831, Oct. 28,	“ payment made to Jas. Collinsworth,	200 00	
	“ interest till 20th Sept., 1843, 11 years,		
	10 months, 22 days,	142 73	
1832, Jan. 1,	“ payment made to Jas. Collinsworth,	500 00	
	“ interest till 20th Sept., 1843, 11 years,		
	8 months, 20 days,	351 67	
“ Sept. 3,	“ payment made to Jas. Collinsworth,	1,639 49	
	“ interest till 20th Sept., 1843, 11 years,		
	and 17 days,	1,166 27	
1833, Jan. 1,	“ payment made to Jas. 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 80	
	“ 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	

Amounts carried forward, \$ 34,245 85 33,626 21



## The United States v. McLemore.

		Amounts brought forward,	\$ 34,245 85	33,626 21
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.

\*288] \*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

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Zeller's Lessee v. Eckert et al.

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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 Pet., 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 [\*289 \*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.

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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.<sup>1</sup>

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

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<sup>1</sup> DISTINGUISHED. *Vetterlein v. Gess v. Meredith*, 16 W. Va., 24 Barnes, 6 Fed. Rep., 703; *Sherman v. CITED. Culver v. Rhodes*, 87 N. Y. Kane, 86 N. Y. 67, 69; s. c., 46 Superior (N. Y.), 318. FOLLOWED. *Bog-*