unlawful. Captain Little, then, must be answerable in damages to the owner of this neutral vessel, and as the account taken by order of the circuit court is not objectionable on its face, and has not been excepted to by counsel before the proper tribunal, this court can receive no objection to it.

There appears, then, to be no error in the judgment of the circuit court, and it must be affirmed with costs.

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*Dunlop & Co. *v.* Ball. [*180

Presumption of payment.

To raise a presumption of payment, from the age of a bond, twenty years must have elapsed exclusive of the period of the plaintiff's disability.[1]

Legal impediments to the recovery of British debts existed in Virginia, until the year 1793.

This was a writ of error to the Circuit Court of the district of Columbia, sitting in Alexandria. The only question in the case arose upon the following bill of exceptions.

"In this case, the plaintiffs were admitted to be, and always to have been, British subjects, residing in Great Britain, and the defendant to be, and have been, a native and always a citizen of the now state of Virginia; and this suit was commenced on the —— day of ———, in the year 1802. The debt was contracted in 1773, in Virginia, at which time, the bond was executed on which the suit was brought. It was also admitted, that the plaintiffs had an agent authorized to collect their debts, so far as the plaintiffs could authorize the same to be collected, during the whole time from the date of the bond to this day; which agent resided in the county in which the defendant lived; also open war subsisted between Great Britain and Virginia, from the 19th day of April 1775, until September 1783.

Further to repel the presumption of payment, the plaintiffs produced the following acts of the general assembly of Virginia upon the subject of British debts contracted before the peace, which acts are in the words following" (Here were inserted the acts dated in March 1785, and Dec. 1787, May 1781, and Nov. 1781): "And the fourth article of the treaty of peace of 1783, and the 6th article of the treaty of peace of 1794, between Great Britain and the United States." The plaintiffs also gave evidence that William Wilson, their agent, delivered over the bond to William Hunter, jun., in 1776, to be collected, at which time he (William Wilson) went to Europe. And when he returned, in 1784, he received back the bond from W. Hunter. Some time after the year 1789, he delivered the said bond to James Johnson for collection, who returned it, and neither of those persons stated that the money, or any part, was collected; that Johnson died in 1797.

Whereupon, the counsel for the defendant prayed the court to instruct the jury, that from the length of time they ought to presume payment of the aforesaid bond. Upon which, the court instructed the jury that from the *length of time stated in the facts above agreed on, the bond, in law, [*181
is presumed satisfied, unless they should find from the evidence, that interest was paid on the bond within twenty years from the 5th of September 1775 (the time of the last payment), or that a suit or demand was made

[1] S. P. Penrose *v.* King, 1 Yeates 344; Bailey *v.* Jackson, 16 Johns. 210.

on the said bond, within twenty years from the last-mentioned time, exclusive (in both cases) of five years, five months and twenty days, taken out of the act of limitations. To which opinion of the court, the plaintiffs, by their counsel, except, &c.

The defendant relied on the plea of payment, and on the length of time to support it.

E. J. Lee, for the plaintiffs in error, relied principally upon the legal impediments which existed in Virginia, to repel the presumption arising from the lapse of time. He contended, that the rule that the lapse of twenty years shall induce a presumption of payment of a bond, is not an absolute and arbitrary rule, but at most is only *primâ facie* evidence, and induces nothing more than a presumption. Any circumstances which can reasonably account for the delay of the plaintiffs in prosecuting their right, without supposing the bond to be satisfied, may be given in evidence to destroy that presumption.

From the year 1774 to 1791, the plaintiffs were incapacitated to maintain a suit, and to recover the money by legal process. The first impediment was caused by the expiration of the fee-bill on the 12th of December 1774, whereby the courts of justice were shut against all persons. This impediment was general, and continued until the commencement of the war, on the 19th of April 1775. From this period, until the peace, in September 1783, the state of war prevented British subjects from bringing suits in our courts, if no other impediment had existed. The first act of assembly of Virginia, applying to British creditors in particular, is that passed in October 1777, sequestering *British property, and suspending executions, until the further order of the legislature, in all cases where a British subject was plaintiff, and a citizen of the commonwealth defendant. Chancery Revisal of Laws, p. 64. The 2d act of impediment is that of November 1781, c. 22, § 3, p. 147, to suspend executions in certain cases. The 3d is the act of May 1782, c. 44, § 2, p. 165, to repeal so much of a former act as suspends the issuing executions upon certain judgments, until December 1783. The 4th is the act of October 1782, to amend an act entitled "an act to repeal so much of a former act as suspends the issuing of executions on certain judgments, until December 1783." The 5th is the act of December 1783, c. 45, p. 182, to revive and continue in force the several acts of assembly for suspending the issuing of executions on certain judgments, until December 1783, p. 218. This last act expired in July 1784.

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If the legal impediments had ceased in the year 1784, with the expiration of this act, we should still have been in time with our suit; for it is brought within twenty years from that time. But these impediments did not cease at that period, but were still continued by the acts of 1785 and 1787.

In addition to these legal impediments, created by the acts of the legislature, were the decisions of juries and courts of law, who supported the plea in bar that the plaintiff was a British subject for several years afterwards. The report of the commissioners under the 6th art. of the treaty with Great Britain mentions a number of cases decided in the courts of Virginia to that effect, from which two only are supposed necessary to be cited. The first is the case of *Warwick's Administrators* v. *Gaskins*, in

Lancaster county, upon the plea that the testator was a British subject; the suit was dismissed in March 1788. *The next case is that of *Gibson, Donaldson & Hamilton*, plaintiffs, v. *Bannister's Executors*, defendants, in Prince George's county, August 1791, in which the plea that the plaintiffs were British subjects was sustained. The fact is notorious, that it was the general opinion of the inhabitants of the state, and of juries, that a British debt could not be recovered. This is acknowledged to be the case in Mr. Chancellor Wythe's report of the case of *Page* v. *Braxton*, p. 127, in the year 1793, which was the first in which it had been decided in any of the superior courts, that a British debt was recoverable. [*183

MARSHALL, Ch. J.—There can be no doubt of this fact. The only difficulty is, to show that it requires twenty years after the removal of the impediments, to create the presumption of payment. It may be a doubt, whether the same time, after the removal of the impediments, is necessary to raise the presumption, as if the bond had borne date at the time of such removal.

Swann, for the defendant, contended, that the time between the 19th of April 1775, and September 1783, being deducted from the age of the bond, when put in suit, the residue, being about twenty years and six months, should be considered as the lapse of time which was to induce the presumption that the disability of the plaintiff ceased on the ratification of the treaty of peace. There are no cases decided in the superior courts of Virginia, in which the plea of disability of the plaintiff, as being a British subject, has been allowed, since the peace. The cases cited are county court cases, and do not appear in the record. They are facts which this court cannot notice.

But if we travel out of the record, other cases may be cited from other countries, in which contrary decisions have taken place. It is a fact, that in Fairfax county, where the defendant always resided, British debts could always be recovered, since the year 1783. If the cases cited against us are admitted to rebut the presumption, this fact is equally strong, and ought to be admitted to support it.

Lee, in reply.—Although it was stipulated by the treaty, *that all legal impediments to the recovery of debts should be removed, yet that did not alter the existing state of things. The obnoxious laws remained in full force, in practice. The fact was, that the legal impediments were not removed. We are not now to consider, what the law ought to have been, but what it was in practice. For if the impossibility of recovering the debt still remained, it destroyed all presumption arising from the lapse of time. [*184

February 28th, 1804. MARSHALL, Ch. J., delivered the opinion of the court.—The only circumstance which could create a question in this case is, that twenty years had not elapsed, exclusive of the period during which the plaintiffs were under a legal disability to recover, before the action was brought.

The principle, upon which the presumption of payment arises from the lapse of time, is a reasonable principle, and may be rebutted by any facts which destroy the reason of the rule. That no presumption could arise

during a state of war, in which the plaintiff was an alien enemy, is too clear to admit of doubt. But it is not so clear, that upon a bond so old as this, the same length of time, after the removal of the disability, is necessary to raise the presumption, as would be required, if the bond had borne date at the time of such removal.

It appears, from the decisions of the courts of Virginia, from the pleas in bar in the federal courts, and particularly from the observations of the chancellor of Virginia, in the case cited, that it was the general understanding of the inhabitants of that state, that British debts could not be recovered: and until the year 1793, there was no decision of the superior courts that such debts were recoverable.

The only question is whether, in case of an old debt, the same time is required to raise the presumption, as in the case of a debt accruing since the impediments have been removed. In such a case, it is not easy to establish a new rule, and *the court think it best to adhere to the old decisions, that twenty years must have elapsed, exclusive of the period of the plaintiff's disability; and are of opinion, that the circuit court erred in directing the jury that payment ought to be presumed.

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The judgment of the court is entered upon the minutes, in the following terms:—The Court having heard the arguments of counsel, and maturely considered the same, is of opinion (and do adjudge, order, and decree accordingly), that the circuit court erred in instructing the jury, "that from the length of time, they were to presume the bond, in the record mentioned, to be satisfied, unless they should find, from the evidence, that interest was paid on the bond, within twenty years from the 5th of September 1775 (the time of the last payment), or that a suit or demand was made on said bond, within twenty years from the last-mentioned time, exclusive, in both cases, of five years, five months and twenty days, taken out of the act of limitations;" there being circumstances in this case which oppose the presumption which would have arisen from the length of time which has elapsed since the date of the bond. And this court doth further adjudge, order and decree, that this cause be remanded to the said circuit court, to be there tried, with directions that there is no presumption of payment of the said bond, as directed by the said circuit court.

Blakeney *v.* Evans.

Assumpsit for work and labor done.

If a man agrees to do certain work, and he does it jointly with another, he is still entitled to recover upon the agreement.[1]

Evans *v.* Blakeney, 1 Cr. C. C. 126, affirmed.

A special action of *assumpsit* was brought, in the Circuit Court of the district of Columbia, sitting at Alexandria, by Evans against Blakeney, upon the following written agreement:

"I will rent of Mr. Evans thirty-one feet of ground on King street by

[1] Under a count for work and labor, the plaintiff may show services rendered by his wife. Hackman *v.* Flory, 16 Penn. St. 196.