

Winchester v. Jackson.

it became the interest of Farrell & Jones that the tobacco should be insured, as it was property intended to be appropriated towards the payment of the debt due to them. The loss rendered the Randolphs the less able to pay, and increased the risk of Farrell & Jones, by diminishing their security. An insurance, therefore, of the property of the debtor, must have been beneficial and satisfactory to the creditor. But this insurance, it seems, the house of Farrell & Jones never thought themselves authorized to make, unless they received immediately from the Randolphs explicit directions for the purpose.

The charge is stale. The claim comes too late ; it is brought forward after a sleep of near 30 years, during which period the original parties and their agents have disappeared and are no more. An acquiescence for such a length of time, and under such circumstances, is too stubborn and inveterate to be surmounted. The claim was put into oblivion ; and there it ought to have remained. A court of equity should not interpose in a case of this kind ; and therefore, the decree pronounced by the circuit court ought to be affirmed.

CUSHING, J., concurred.

Judgment affirmed. (a)

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*FIELD v. MILTON.

Certiorari.

A *certiorari* will be awarded, upon a suggestion that the citation has been served, but not sent up with the transcript of the record.

W. PINCKNEY, for plaintiff in error, suggested that the citation had been served, but was not returned by the clerk below, with the writ of error, and prayed a *certiorari*.

THE COURT said it was a new case.

Certiorari granted.

WINCHESTER v. JACKSON and others.

Costs in error.

Costs will be allowed upon a dismissal of a writ of error, for want of jurisdiction, if the original defendant be also defendant in error.

THE writ of error was dismissed for want of jurisdiction, the parties not appearing upon the record to be citizens of different states.

Campbell, for the defendants in error, prayed that the dismissal might be with costs, the original defendants being also defendants in error.

The clerk stated that the practice had heretofore been to dismiss, without costs, where the dismissal was for want of jurisdiction.

THE COURT directed it to be dismissed, with costs.

(a) MARSHALL, Ch. J., did not sit in the cause, having decided it in the court below.