UNITED STATES v. WILEY.

1. The effect of the rebellion was to suspend the running of statutes of limitations during its continuance, as well in regard to the claims of the government against its own citizens resident in the rebellious States as to the claims by citizens of the loyal States against that same class of persons. The doctrine of *Hanger v. Abbott* (6 Wallace, 532), and *The Protector* (9 Id. 687), which was applied to the latter case, affirmed and applied to the former.
2. This general rule was not changed by the act of Congress of June 11th, 1864 (13 Stat. at Large, 123), relative to the limitation of certain actions. On the contrary, that statute requires all the time to be deducted during which the suit could not be prosecuted by reason of resistance to the laws or interruption of judicial proceedings, whether such time was before or after its passage. *Stewart* v. *Kahn* (*supra*, 493), affirmed.

ERROR to the Circuit Court for the District of Virginia; the suit below being one by the *United States* against J. F. Wiley, former marshal of the Eastern District of the State just named, upon his official bond. The case was this:

A statute of April 10th, 1806,* "relating to bonds given by marshals," enacts by its second section, that it shall be lawful in case of a breach of condition, "for any person, persons, or body politic thereby injured, to institute a suit." A fourth section enacts:

"That *all* suits on marshals' bonds . . . shall be commenced and prosecuted *within six years* after the right of action shall have accrued, saving nevertheless the rights of infants, *feme coverts*, and persons *non compos mentis*, so that they sue within three years after their disabilities are removed."

In 1861 the Southern rebellion broke out. The present cause of action arose in the previous year.

Four years or more afterwards, that is to say, on the 11th of June, 1864,† Congress passed an act enacting:

"That whenever, during the existence of the present rebellion, any action, civil or criminal, *shall accrue* against any per-

* 2 Stat. at Large, 374. † 13 Ib. 123.

son, who, by reason of resistance to the execution of the laws of the United States, or the interruption of the ordinary course of judicial proceedings, cannot be served with process for the commencement of said action—

"Or the arrest of such person; or whenever, after such action *shall have accrued*, such person *cannot*, by reason of such resistance to the execution of the laws of the United States, or such interruption of the ordinary course of judicial proceedings, *be arrested, or served with process* for the commencement of the action—

"The time during which such person *shall so be* beyond the reach of legal process, shall not be deemed or taken as any part of the time limited by law for the commencement of the action."

On the 15th of February, 1869, about nine years after the cause of action arose, this suit was brought. The defendant pleaded the statute of April 10th, 1806. A general replication was put in, with leave to offer in evidence all matters which might have been replied specially. It was agreed of record, "that, from the 24th day of May, 1861, to the 24th day of May, 1865, the defendants were actual residents of the State of Virginia, and that, during the whole of that period, by reason of resistance to the execution of the laws of the United States and the interruption of the ordinary course of judicial proceedings in the State of Virginia, the defendants could not be served with process for the commencement of this action."

The court below gave judgment for the marshal, and the United States brought the case here.

Mr. Akerman, Attorney-General, Mr. Bristow, Solicitor-General, and Mr. Hill, Assistant Attorney-General, for the United States, contended, 1st, that the act of the 10th April, 1806, was meant to limit suits brought by individuals on the marshal's bond, and that the limitation of six years prescribed in it did not touch the rights of the government; against which it was a general principle that limitations did not run.

2d. That however this might be, the case was covered by

Hanger v. *Abbott*,* and *The Protector*,† to the effect that the time during which the courts in the lately rebellious States were closed to the opposing belligerents, was to be excluded from the computation of time fixed by the statute of limitations within which suits must be brought; that there was no reason, if the statute of limitations ran against the United States at all, why this exclusion should not be made in respect of suits brought by them as well as suits brought by their citizens.

Mr. Tazewell Taylor, contra:

The language of the act of April 10th, 1806, is general. No exception is made in favor of the government. The government could have repealed it if it had desired to. Its not doing so is evidence of its purpose to be bound by it.

Does the simple fact of war alter the case? *Hanger* v. *Abbott*, and *The Protector*, only rule that war suspended the statutes running against citizens' claims by one citizen on another. *They* had no right to sue during war. The act of the government had made it criminal for them to do so. But the case with the United States was different. There was never a suspension for a moment, of the right of the United States to sue; no act of the government which was intended to prevent it from commencing an action. Moreover, if the cases just above referred to are open for any reconsideration, it is worthy of remark that it is a well-settled rule of construction in England, that the courts will not ingraft exceptions upon a general statute of limitations, merely because they stand upon as strong grounds of reason, or upon the same grounds as the exceptions, which may have been introduced into it; or because it may be thought unjust or unreasonable, that the statute should not contain them. We cite "the great case," as it is called by Sir William Grant, of *Stowel* v. *Lord Zouche*, in Plowden, pp. 353, 369; and *Beckford* v. *Wade*,‡ the latter case decided upon great consideration, and after a review of the leading authorities, by Sir W. Grant, one of the most emi-

* 6 Wallace, 532. † 9 Id. 687. ‡ 17 Vesey, 88.

nent judges, and one of the ablest and soundest reasoners, that ever sat in the English Court of Chancery. Though the case of *Beckford* v. *Wade* is a different case from the one now before the court, yet in that case the master of the rolls inquires at considerable length into the reasonableness of the rule to which we have referred, and reviews some of the most respectable and weighty authorities by which it is established. His opinion seems to be in favor of the rule, and he refers to the cases of *Lord Buckinghamshire* v. *Drury*,* and *Stowel* v. *Lord Zouche*, to show that infants and married women would have been bound by general statutes of limitations, unless they had been expressly excepted out of them. He further states, that absent defendants had the benefit of the statute of limitations, until a statute was passed in the reign of Queen Anne to prevent them from taking advantage of it. Surely there could not be in any case stronger reasons for excepting it from the statute, than in the case of a plaintiff who could not sue, because the debtor had absconded or chose to be out of the realm. Yet all attempts to introduce such an exception *had failed*, until the legislature was obliged to interfere. He refers also to the cases of *Hall* v. *Wybourn*,† and *Aubry* v. *Fortescue*,‡ with apparent approval; in which the opinion had been expressed, that even if the courts were shut up in time of war, *so that no original could be served*, the statute of limitations would continue to run, and certainly no cases can stand upon stronger grounds than some of the cases mentioned above, in which the courts constantly refused to make any exception.

Does the act of June 11, 1864, alter the case? That act has two branches, and in both its operation is prospective. With respect to those actions, which in the language of the act "shall accrue," this is palpably clear. It is clear, also, that in relation to actions, which *shall have accrued*, it is prospective to this extent, that although it applies to past transactions, that is to say, to causes of action which had accrued before its passage, still, even in those cases, it de-

* Wilmot, 177. † 2 Salkeld, 420. ‡ 10 Modern, 206.

ducts from the time which may have elapsed since the cause of action arose, only so much of the time of the rebellion, or of the period when process could not be served, as elapsed *after* the passage of the act. This appears from the use of the phrases, "cannot be," and "shall so be." The act does not use the words, "*cannot have been*," but "cannot *be*." It does not say, "shall *so have been*," but who "shall *so be*" beyond the reach of legal process. Both these expressions are prospective, and can only mean, that if, *after the passage of the act*, any person cannot be arrested, then the time, *after the passage of the act*, during which process is obstructed, shall be deducted, in computing the time within which the action may be, or might have been, brought.

Congress has, therefore, said, that *so much* of the time of the rebellion as elapsed after the passage of the act aforesaid shall not be computed in applying the act of limitations. This is equivalent to saying that the residue of the term of the war shall be computed.

What we ask the court to do is, to consider the plain language of an act of Congress, and to carry out the intent of the law, as gathered from that language. We insist, therefore, that, even if the act of limitations of 1806 ought, in the absence of all other legislation on the subject, to have been construed in the same way that the statute of Arkansas was by the court in *Hanger* v. *Abbott*, still, the act of June 11th, 1864, has changed the law.

Mr. Justice STRONG delivered the opinion of the court.

Whether the act of April 10th, 1806, which prescribes a limitation to suits upon marshals' bonds, is applicable to suits brought by the United States, is a question which we do not propose now to answer, for, if it is, we are still of the opinion that the defendants' plea of the statute was an insufficient bar.

The cause of action arose in 1860, and the present suit was brought on the 15th of February, 1869. But it is stipulated between the parties that from the 24th day of May, 1861, to the 24th day of May, 1865, the defendants were

actual residents of the State of Virginia, and that during the whole of that period, by reason of resistance to the execution of the laws of the United States, and the interruption of the ordinary course of judicial proceedings in said State of Virginia, the defendants could not be served with process for the commencement of the action. We know, judicially, that during the four years in which the process could not be served there existed a state of war, and that the inability to effect service was caused by that. The question, therefore, is whether the time during which the war existed, and during which it was impossible to serve process for commencement of suit, is to be deducted from the time which elapsed between 1860 and February 15th, 1869.

In *Hanger* v. *Abbott* it was decided that the effect of the war was to suspend the running of statutes of limitation during its continuance, in suits between the inhabitants of the loyal States and the inhabitants of those in rebellion. The same doctrine was repeated in substance in *The Protector*. It would answer no good purpose to go behind the decisions and review the reasons upon which they are founded. We are still of opinion that they rest upon sound principle. But it is said those decisions only rule that the war suspended the statutes' running against claims by one citizen upon another, and that they do not relate to claims of the government against its own citizens resident in rebellious States. This may be conceded, but the same reasons which justify the application of the rule to one class of cases require its application to the other. True, the *right* of a citizen to sue during the continuance of the war was suspended, while the *right* of the government remained unimpaired. But it is the loss of the ability to sue rather than the loss of the right that stops the running of the statute. The inability may arise from a suspension of right, or from the closing of the courts, but whatever the original cause, the proximate and operative reason is that the claimant is deprived of the power to institute his suit. Statutes of limitations are indeed statutes of repose. They are enacted upon the presumption that one having a well-founded

claim will not delay enforcing it beyond a reasonable time, if he has the power to sue. Such reasonable time is therefore defined and allowed. But the basis of the presumption is gone whenever the ability to resort to the courts has been taken away. In such a case the creditor has not the time within which to bring his suit that the statute contemplated he should have. It is quite obvious that this is the case, as well where the government is the creditor as where the creditor is a citizen of the government, and if, therefore, the running of the statute is suspended in favor of the citizen, with equal reason must it be in favor of the government. There is also great force in the thought suggested by the observations made in *Hanger* v. *Abbott*, that "unless the rule be so, the citizens of a State may escape the payment of their debts to the government by entering into an insurrection and rebellion, if they are able to close the courts and successfully resist the laws until the bar of the statute shall have become complete. Such a doctrine is too unreasonable to be for an instant admitted."

It has been argued, however, on behalf of the defendants in error, that if the general rule be as above stated, it was changed by the act of Congress of June 11th, 1864. The operation of the statute, it is said, is to direct that the time *after the passage of the act* during which process might be hindered shall be deducted in computing the time within which the action should have been brought, and hence that an implication arises that the time antecedent to its passage shall not be deducted. Such is not our understanding of the enactment. It is, doubtless, prospective as furnishing a rule for the action of courts, but it did not abrogate the common law. Even were it admitted that the time required to be deducted is only that which was after the passage of the act, there is no necessary implication that the time antecedent to its passage should be taken as a part of the period limited by law for the commencement of actions. The act of March 2d, 1867,* authorized appeals and writs of error

* 14 Stat. at Large, 545.

from and to courts in judicial districts when the regular sessions of the courts had been suspended by insurrection or rebellion, if brought or sued out within one year from the passage of the act. This act might with more reason be claimed as raising an implication that such appeals or writs of error cannot be allowed after the expiration of a year from its passage. Yet in *The Protector* it was held that an appeal was in time though not taken until July 28th, 1869, more than eight years after the final decree in the Circuit Court, and more than two years after the enactment of 1867, and this because the four years of the war were to be deducted. In other words, the statute being affirmative only, raised no implication of an intent to repeal a former statute or alter the common law to which it was not repugnant.

The purpose of the act of 1864 was manifestly remedial, to preserve and restore rights and remedies suspended by the war. Hence it is entitled to a liberal construction in favor of those whose rights and remedies were in fact suspended. The mischief it sought to remove would be but half remedied were it construed as contended for by the plaintiffs in error. It is not, therefore, to be admitted that the intention of Congress was to prescribe a deduction only of the time which might elapse after the passage of the act, during which it might be impossible to serve process. On the contrary, we are of opinion that the statute requires all the time to be deducted during which the suit could not be prosecuted by reason of resistance to the laws, or interruption of judicial proceedings, whether such time was before or after its passage. Such we have decided to be its meaning at the present term, in *Stewart* v. *Kahn*,* and it is unnecessary to repeat the reasons given for the decision.

These observations are sufficient to show that in our opinion there was error in entering a judgment for the defendants.

JUDGMENT REVERSED AND THE CAUSE REMANDED FOR FURTHER PROCEEDINGS.

* *Supra*, 493, the case immediately preceding.