

Alexandria v. Patten.

claims to set against them the balance due to his testator under the settlement of 1792. On those subsequent accounts, that balance has no influence. By introducing it into an account he was compellable to render, he cannot destroy the effect of that account. Had he intended to rely on this circumstance, he ought to have made the point before the auditors, and thus have enabled the plaintiffs to take other measures to substantiate his claim. The auditors say, they "admitted the account presented by the defendant;" but this must be understood, with the exception of the balance which he claimed under the settlement of July 1792. It does not appear, from their report, that the claims of the plaintiff below rested on that account so far as it went; but it is probable, that further research was deemed unnecessary. The court cannot say that in this the auditors erred.

The decree of the circuit court is affirmed, so far as it accords with this opinion, and is reversed as to the residue.

UNITED STATES *v.* McDOWELL.*Jurisdiction in error.*

In deciding whether the matter in dispute be sufficient to sustain the jurisdiction of this court, it will look to the sum due upon the condition of a bond, and not to the penalty.

ERROR to the District Court for the district of Kentucky, in an action of debt for \$20,000, the penalty of an official bond given by the defendant, as marshal of that district, for the faithful execution of the duties of his office by himself and his deputies. The defendant pleaded performance generally. The United States, in their replication, assigned a special breach of the condition of the bond, in not paying over to the United States the sum of \$328. *The judgment below was against the United States, who sued out [*317 the present writ of error. But—

THIS COURT, without argument, decided that it had no jurisdiction, the matter in dispute being of less value than \$2000.

MAYOR and COMMONALTY OF ALEXANDRIA *v.* PATTEN and others.*Application of payments.*

If a debtor, at the time of making a partial payment, does not direct to which account the payment shall be applied, the creditor may, at any time, apply it to which account he pleases.¹

ERROR to the Circuit Court of the district of Columbia, sitting at Alexandria, in an action of debt brought by the Mayor and Commonalty of

¹ This point is settled by numerous decisions. *Cremer v. Higginson*, 1 Mason 323; *United States v. Wardwell*, 5 Id. 82; *Gordon v. Hobart*, 2 Story 243; *United States v. Linn*, 2 McLean 501; *United States v. Bradbury*, 2 Ware 146; *Postmaster-General v. Norvell*, Gilp. 106; *Mann v. Marsh*, 2 Caines 99; *Allen v. Culver*, 3 Den. 284; *Sheppard v. Steele*, 43 N. Y. 52. But, it seems, that the creditor ought

at once to exercise the option given to him by law. *Logan v. Mason*, 6 W. & S. 9; *Watt v. Hoch*, 25 Penn. St. 411. Otherwise, the law will make the application in the way most beneficial to the creditor. *Pierce v. Sweet*, 33 Id. 151; *Ege v. Watts*, 55 Id. 321; *Foster v. McGraw*, 64 Id. 464; *Woods v. Sherman*, 71 Id. 100; *Field v. Holland*, 6 Cr. 8.