

## Statement of the case.

UNITED STATES *v.* WILDER.

1. When a debtor admits a certain sum to be due by him and denies that a larger sum claimed is due, a payment of the exact amount admitted cannot be converted by the creditor into a payment, on account of the larger sum denied, so as to take the claim for such larger sum out of the statute.
2. The statute of limitations is to be enforced, not explained away.

## APPEAL from the Court of Claims.

On the 23d of May, 1861, Burbank & Co. contracted with Major McKinstry, a quartermaster of the United States, to furnish transportation for all public stores from St. Paul to Fort Abercrombie, at the rate of \$2.90 per 100 lbs. The contract specified no period of duration, but the parties acted under and in pursuance of its terms, until the 19th of July, 1863. On that day, Captain Carling, an assistant quartermaster in charge of the department at St. Paul, being obliged, in a military exigency, to send forward quartermaster and commissary stores to Fort Abercrombie, called upon Burbank & Co. to receive and transport them under the contract referred to. But Burbank & Co. declined to receive and transport the goods under that contract, and refused to acknowledge its force and validity. Carling, being unable to obtain transportation from other parties, thereupon entered into a verbal agreement with them that if they would transport the stores they should receive for their services whatever price the transport might be reasonably worth. They carried the stores accordingly. Carling fixed the value of the carriage at \$4.50 per 100 lbs. But the quartermaster's department refused to allow or pay to Burbank & Co. any greater price than \$2.90 per 100 lbs.; alleging as a reason for their refusal that the obligation of the original contract had not been terminated by reasonable notice, and that the services justly and legally ought to be deemed to have been rendered under *it*, and at the rate of compensation therein agreed on.

The services were performed and completed on the 31st of July, 1863.

## Opinion of the court.

On the 1st of October, 1863, Burbank & Co. were paid by the quartermaster \$6393.72, being a payment at the rate of \$2.90 per 100 lbs., and leaving unpaid \$3516.21; which "the defendants then and there refused to pay. And it still remains unpaid."

The petition was filed in the Court of Claims on the 26th of August, 1869, being more than six years from the time the services were performed, and less than six years from the time of payment.

Upon these facts the Court of Claims decided:

1st. That the claimants had a good cause of action upon the parol agreement.

2d. That they were not barred from maintaining this suit upon the facts set forth and within the meaning of the act of March 3d, 1863, reorganizing the Court of Claims, "and which declares that every claim against the United States shall be forever barred, unless the petition setting forth a statement of the claim be filed in the court . . . . *within six years after the claim first accrued.*"\*

The United States appealed and alleged as error that the cause was barred by the statute of limitations, and that the Court of Claims should have so held.

*Mr. C. H. Hill, for the United States; Mr. J. B. Sanborn, contra.*

Mr. Justice DAVIS delivered the opinion of the court.

We think the Court of Claims erred in deciding that the claimant was not barred by the provision in the act reorganizing that court. The claim accrued on the 31st of July, 1863, because the services were rendered at that time. The petition was not filed until six years afterwards. The claim was, therefore, barred by the statute, unless, in some way, taken out of it. It is insisted that this has been done by a payment of a portion of the demand within the six years, and this presents the only question for consideration.

This court has not adopted the rule of decision made at

\* 12 Stat. at Large, 765.

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Opinion of the court.

one time in England,\* and to some extent in this country, under which, by a constructive equity, judicial refinements came near to abolish the statute altogether. On the contrary, following the decisions of the English courts,† made more immediately after the passage of the statute of James I, we have sought to give to it full effect. In 1814, Marshall, C. J., delivering the judgment of this court, declared‡ that the statute of limitations was entitled to the same respect as other statutes, and should not be explained away. The same doctrine has been asserted in subsequent decisions.§

It results from these cases that a promise to pay cannot be inferred from the mere fact of payment of part of a debt, there being nothing to raise a presumption that it was a payment on account of this debt. The principle on which part payment takes a case out of the statute is, that the party paying intended by it to acknowledge and admit the greater debt to be due. If it was not in the mind of the debtor to do this, then the statute, having begun to run, will not be stopped by reason of such payment. It is too plain for controversy that the payment in question was not intended as an acknowledgment of the demand sued for. Instead of being applicable to an admitted debt, it was in denial of the right to further payment. The sum paid was the exact amount due under the written agreement, and was in discharge of the obligation imposed by it. That agreement was acknowledged, while the verbal arrangement made by the assistant quartermaster was repudiated. It is difficult to see how a payment in full of an admitted contract can be converted into an acknowledgment of one which was denied.

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\* See *Trueman v. Fenton, Cowper*, 548; *Quantock v. England*, 5 *Burrow*, 2628; *Yea v. Fouraker*, 2 *Id.* 1099.

† *Dickson v. Thomson*, 2 *Shower*, 126; *Andrews v. Brown*, *Precedents in Chancery*, 385; *Williams v. Gun*, *Fortesque*, 177; *Bland v. Haselrig*, 2 *Ventriss*, 152; and *Benyon v. Evelyn*, A. D. 1664, *Sir Orlando Bridgman's Judgments*, 324; all referred to in *Angel on Limitations*, pp. 18, 212, fifth edition, 1869.

‡ *Clementson v. Williams*, 8 *Cranch*, 72.

§ *Bell v. Morrison*, 1 *Peters*, 351; *McCluny v. Silliman*, 3 *Id.* 270.

## Statement of the case.

The case of the claimant is in some of its aspects worthy of consideration, but as it was not filed in the Court of Claims until barred by the statute, we are not at liberty to discuss its merits.

JUDGMENT REVERSED, and the cause remanded to the Court of Claims, with directions to

DISMISS THE PETITION.

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KLINGER v. STATE OF MISSOURI.

Where the judgment of a State court might have been based either upon a State law repugnant to the Constitution or laws of the United States, or upon some other independent ground, and it appears that the court did, in fact, base it upon the latter ground, this court will not take jurisdiction of the case, even though it should think the decision of the State court erroneous; and so, also, where it does not appear on which of the two grounds the judgment was, in fact, based, if the independent ground was a good and valid one of itself to support the judgment, this court will not take jurisdiction; but if not, it will presume that the judgment was based on the State law in question, and will take jurisdiction.

By the constitution of Missouri, adopted in 1865, a test oath was prescribed to be taken by public officers, jurors, &c., which this court, in *Cummings v. Missouri* (4 Wallace, 277), decided to be unconstitutional. A juror, on a trial for murder in a State court, refused to take it; but on being examined as to the reason of his refusal, he alleged, not only that he had sympathized with the late rebellion, and, therefore, could not take it truthfully, but that those were his feelings still, and stronger than ever; whereupon the court discharged him. *Held*, that his avowed present disloyalty to the government was a sufficient cause in itself for his discharge, irrespective of his refusal to take the oath; and as it did not appear that he was discharged for the latter cause, the Supreme Court of the United States refused to take jurisdiction of the case.

ERROR to the Supreme Court of Missouri; the case being thus:

By the third section of the second article of the constitution of Missouri, adopted in April, 1865, it was declared in substance that no person who had ever engaged in the rebellion, or had manifested any sympathy therefor, in any