

**Mandeville and Jamesson Vs. Wilson**

**Mandeville and Jamesson Vs. Wilson**

**SooperKanoon Citation :** [sooperkanoon.com/78446](http://sooperkanoon.com/78446)

**Court :** US Supreme Court

**Decided On :** 1809

**Appeal No. :** 9 U.S. 15

**Appellant :** Mandeville and Jamesson

**Respondent :** Wilson

**Judgement :**

Mandeville & Jamesson v. Wilson - 9 U.S. 15 (1809)

U.S. Supreme Court Mandeville & Jamesson v. Wilson, 9 U.S. 5 Cranch 15 15 (1809)

**Mandeville & Jamesson v. Wilson**

**9 U.S. (5 Cranch) 15**

*ERROR TO THE CIRCUIT COURT OF THE DISTRICT*

*OF COLUMBIA, SITTING AT ALEXANDRIA*

**SYLLABUS**

Amendments are within the discretion of the court below.

*Quaere* whether the court ought to permit amendments after judgment upon demurrer.

In the statute of limitations, the exception in favor of merchants' accounts applies as well to actions of assumpsit as to actions of accounts.

It extends to all accounts current which concern the trade of merchandise.

An account closed by the cessation of dealings between the parties is not an account stated.

It is not necessary that any of the items should have been charged within the five years, nor that the declaration should aver the money to be due upon an open account between merchants.

Error to the Circuit Court of the District of Columbia, sitting at Alexandria, in an action of assumpsit brought by the defendant in error for goods sold and delivered, and for the hire of a slave.

The defendants below pleaded *non assumpserunt* and the statute of limitations.

To the latter plea the plaintiff replied

"That the said money in the several promises and undertakings aforesaid above mentioned in the declaration, at the time of the making of the promises and undertakings aforesaid, became due and payable on an account current of trade and merchandise had between the said plaintiff and the said defendants as merchants, and wholly concerned the trade of merchandise, to-wit, at Alexandria aforesaid, in the county aforesaid, and this he is ready to verify."

To which the defendants rejoined

"That in the month of January, 1799, the partnership of Mandeville & Jamesson was dissolved, the public notice given of such dissolution, of which the said plaintiff had a knowledge at the time, and that at the time of the said dissolution of the partnership aforesaid, all accounts between the said plaintiff was the said

Mandeville & Jamesson ceased, and since which time no accounts have existed or been continued between the plaintiff and the said defendants, which the said defendants are ready to verify."

The plaintiff surrejoined

"That the goods, wares,

Page 9 U. S. 16

and merchandise in the said declaration mentioned were by the said plaintiff sold and delivered to the said defendants, and the said negro in the said declaration mentioned was hired by the plaintiff to the defendants before the month of January in the year 1799, the time when the said defendants in their said rejoinder state their said co-partnership was dissolved, and this the plaintiff is ready to verify."

To this surrejoinder the defendants demurred and assigned for cause of demurrer that "the surrejoinder is a departure in this, that it is no answer to the defendants' rejoinder."

Upon joinder in demurrer, the court below gave judgment for the plaintiff.

A bill of exceptions stated that on the day on which the cause was called for trial, the court permitted the plaintiff to withdraw his general replication to the plea of the statute of limitations, and to file the above special replication. And that after the court had given judgment upon the demurrer, it refused to permit the defendants to withdraw their demurrer, and their rejoinder, and to file a general rejoinder to the plaintiff's replication.

Page 9 U. S. 18

MR. CHIEF JUSTICE MARSHALL delivered the opinion of the Court,

That the exception in the statute applied to actions of assumpsit, as well as to actions of account. That it extended to all accounts current which concern the trade of merchandise between merchant and merchant. That an account closed by

the cessation of dealings between the parties is not an account

Page 9 U. S. 19

stated, and that it is not necessary that any of the items should come within the five years. That the replication was good, and not repugnant to the declaration, and that the rejoinder was bad.

*Judgment affirmed with costs.*

**SooperKanoon - India's Premier Online Legal Search - [sooperkanoon.com](http://sooperkanoon.com)**