

United States Vs. Mclemore

United States Vs. Mclemore

SooperKanoon Citation : sooperkanoon.com/79972

Court : US Supreme Court

Decided On : 1847

Appeal No. : 45 U.S. 286

Appellant : United States

Respondent : Mclemore

Judgement :

United States v. McLemore - 45 U.S. 286 (1847)

U.S. Supreme Court United States v. McLemore, 45 U.S. 4 How. 286 286 (1847)

United States v. McLemore

45 U.S. (4 How.) 286

APPEAL FROM THE CIRCUIT COURT OF THE UNITED

STATES FOR THE DISTRICT OF MIDDLE TENNESSEE

SYLLABUS

Although a circuit court, sitting as a court of law, may direct credits to be given on a judgment in favor of the United States, and consequently examine the grounds on which such an entry is claimed, and may direct the execution to be stayed until

such an investigation shall be made, yet it cannot entertain a bill, on the equity side, praying that the United States may be perpetually enjoined from proceeding upon such judgment.

Nor can a decree or judgment be entered against the government for costs.

It is unnecessary to recite all the circumstances which led to the filing of the bill in equity, as it was dismissed for the want of jurisdiction in the circuit court. The facts in the case are summarily stated in the opinion of the Court. It is proper, however, to exhibit the account to which the opinion of MR. JUSTICE WAYNE refers:

THE UNITED STATES OF AMERICA v. SEARCY'S EXECUTORS AND SECURITIES

DR. Robert Searcy, late district Paymaster, in account with the U.S.

To amount of judgment, 21 June, 1827. \$17,028.41

" interest till 20 Sept., 1843

16 years, 3 months, 29 days 16,597.80

\$33,696.21

Page 45 U. S. 286

1828, May 3, Cr. by payment to Tho. Fletcher \$ 1,283.62

" interest till 20th Sept.,

1843, 15 years, 4 months,

17 days 1,184.00

" July 8, " payment to Tho. H. Fletcher 519.25

" interest till 20 Sept., 1843,

15 years, 2 months, 12 days . 473.33

" July 18, " payment to Tho. H. Fletcher . 1,940.68

" interest till 20 Sept., 1843,

15 years, 2 months, 2 days 1,766.05

" July 24, " payment made to Tho. H.

Fletcher. 498.33

" interest till 20 Sept., 1843,

15 years, 1 month, 26 days 455.34

Page 45 U. S. 287

" Oct. 28, " payment made to Tho. H.

Fletcher. 960.00

" interest till 20 Sept., 1843,

14 years, 10 months,

22 days 857.92

1829, Jan. 15, " payment made to Tho. Fletcher 304.60

" interest till 20 Sept., 1843,

14 years, 8 months, 5 days 267.77

" Jan. 24, " payment made to Tho. Fletcher 498.34

" interest till 20 Sept., 1843,

14 years, 7 months, 26 days 437.91

" Jan. 26, " payment made to Tho. Fletcher 286.67

" interest till 20th Sept., 1843,

14 years, 7 months, 24 days 251.39

" April 6, " payment made to Tho. Fletcher 1,273.76

" interest till 20 Sept., 1843,

14 years, 6 months, 14 days 1,110.48

" June 12, " payment made to Jas.

Collinsworth. 1,163.50

" interest till 20 Sept., 1843,

14 years, 3 months, 8 days 995.92

" June 24, " payment made to Jas.

Collinsworth. 1,027.75

" interest till 20 Sept., 1843,

14 years, 2 months, 26 days 877.40

" Oct. 22, " payment made to Jas.

Collinsworth. 1,920.00

" interest till 20 Sept., 1843,

13 years, 10 months, 28 days 1,602.56

1831, Oct. 28, " payment made to Jas.

Collinsworth. 200.00

" interest till 20, Sept., 1843,

11 years, 10 months, 22 days 142.73

1832, Jan. 1, " payment made to Jas.

Collinsworth. 500.00

" interest till 20 Sept., 1843,

11 years, 8 months, 20 days 351.67

" Sept. 3, " payment made to Jas.

Collinsworth. 1,669.49

" interest till 20 Sept., 1843,

11 years and 17 days. . . . 1,166.27

1833, Jan. 1, " payment made to Jas.

Collinsworth. 2,104.60

" interest till 20 Sept., 1843,

10 years, 8 months, 20 days 1,351.00

1834, Jan 1, " payment made to Collinsworth 1,279.80

" interest till 20 Sept., 1843,

9 years, 8 months, 20 days 756.08

1833, Jan. 1, " payment made to Collinsworth 861.00

" interest till 20 Sept., 1943,

10 years, 8 months, 20 days 553.91

1839, Jan. 1, " payment made to J. P. Grundy 422.00

" interest till 20 Sept, 1843,

4 years, 8 months, 20 days 119.58

1831, Aug. 10, " payment made to Collinsworth 425.00

" interest till 20 Sept, 1843,

12 years, 1 month, 10 days 308.84

----- \$35,521.27

Amount overpaid \$ 1,895.06

MR. JUSTICE Mc LEAN delivered the opinion of the Court.

Page 45 U. S. 288

The bill was filed by McLemore and Cantwell, surviving executor of Robert Searcy, deceased, and surviving executor of George M. Deoderick, deceased, representing that a judgment was obtained by the United States against the executors of Searcy, for the sum of seventeen thousand and twenty-eight dollars and forty-one cents. That various payments had been made on the judgment until the whole or nearly the whole had been paid. That the last execution on the judgment was issued 10 January, 1842, for a balance claimed on the judgment of two thousand eight hundred thirty-two dollars and thirty-seven cents. And they state that their payments were made to different persons named, who succeeded each other in the office of District Attorney of the United States for Middle Tennessee, and that by the absence and death of a part of them it is difficult to

show the sums paid. That the money was principally collected by the district attorneys on notes handed them for collection, the proceeds of which, when received, were to be applied to the discharge of the judgment. That this arrangement was sanctioned by the Treasury Department. And the prayer of the bill is that the judgment may be enjoined &c.;

The district Attorney of the United States answered the bill, and the matter of payments was referred to a master, who reported a balance against the United States, after paying the judgment. On this report, the district judge holding the circuit court decreed a perpetual injunction, and that the United States should pay the costs.

There was no jurisdiction of this case in the circuit court, as the government is not liable to be sued, except with its own consent, given by law. Nor can a decree or judgment be entered against the government for costs.

The circuit court, as a court of law, may direct credits to be given on the judgment, and having a right to order satisfaction to be entered on the judgment, consequently may examine the grounds on which such an entry is claimed, and may direct the execution to be stayed until such an investigation shall be made.

This bill is dismissed.

MR. JUSTICE WAYNE concurred in the decision of the case, but said it appeared in the record that a different mode of computing interest had been pursued from that which had been settled by this Court. In [Livingston v. Story](#), 13 Pet. 371, the Court said:

"The correct rule, in general, is that the creditor shall calculate interest whenever a payment is made. To this interest the payment is first to be applied; and if it exceed the interest due, the balance is to be applied to diminish the principal. If the payment fall short of the interest, the balance of interest is not to be added to the principal so as to produce interest. This rule is equally applicable, whether the debt be one which expressly draws

interest, or on which interest is given in the name of damages."

Nor is it to be considered, by anything which the Court has done upon the motion, that any sanction is given to any other mode of computing interest.