

De Lane Vs. Moore

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Appeal No. : 55 U.S. 253

Appellant : De Lane

Respondent : Moore

Judgement :

De Lane v. Moore - 55 U.S. 253 (1852)

U.S. Supreme Court De Lane v. Moore, 55 U.S. 14 How. 253 253 (1852)

De Lane v. Moore

55 U.S. (14 How.) 253

APPEAL FROM THE DISTRICT COURT OF THE UNITED

STATES FOR THE MIDDLE DISTRICT OF ALABAMA

SYLLABUS

Where an antenuptial contract was alleged to have been made, and the affidavits of the parties claiming under it alleged that they never possessed or saw it; that they had made diligent inquiry for it, but were unable to learn its present existence

or place of existence; that inquiry had been made of the guardian of one of the children, who said that he had never been in possession of it, and did not know where it was; that inquiry had been made at the recording offices in vain, and that the affiants believed it to be lost; secondary proof of its contents ought to have been admitted.

Whether recorded or not, it was binding upon the parties. If recorded within the time prescribed by statute or if reacknowledged and recorded afterwards, notice would thereby have been given to all persons of its effect.

If it was regularly recorded in one state and the property upon which it acted was removed to another state, the protection of the contract would follow the property into the state into which it was removed.

But where no suit was brought until eight or nine years after the death of the husband, and then the one which was brought was dismissed for want of prosecution, another suit against the executors who had divided the property, comes too late.

Page 55 U. S. 254

The case is fully stated in the opinion of the Court.

The counsel for the appellants, after stating the case, proceeded:

It appears, from the record, that the defendants, objected to the reading of the papers of the marriage settlement, because the affidavits of the complainants did not make out such a case of the loss or destruction as would dispense with the production of the original. The objection was sustained by the presiding judge. By the ruling of the judge, the complainants' bill was ordered to be dismissed.

It is submitted that the ruling of the judge was erroneous, and if it should be sustained here, the complainants must fail in any attempt to recover their rights, because they cannot be allowed to introduce the only evidence on which they rest.

The evidence offered by the complainants, and rejected by the court, was both competent and sufficient to satisfy a judge, when discretion must on such questions regulate his judgment; and especially so in the chancery jurisdiction of the court, where it is usual to receive with a liberal latitude, *sub modo* at least, all evidence that can lead to a competent judgment on the rights of the parties. The bill was filed by those who were seeking their rights by discovery, and against the acts of those who had a temptation to destroy the evidence against them. But it is submitted that the question has been authoritatively ruled by the court, and according to the adjudged cases on the same subject in Alabama, where this case was tried, the evidence rejected should have been admitted. [*Taylor v. Riggs*, 1 Pet. 591, 596; S.C., 9 Warton 483; *Winn v. Patterson*, 9 Pet. 663, \[34 U. S. 676\]\(#\)](#) ; S.C., [30 U. S. 5](#) Pet. 233, [30 U. S. 240](#) , [30 U. S. 242](#) ; *Sturdevant v. Gaines*, 5 Ala. 435; *Slerge v. Clapton*, 6 Ala. 589.

If the evidence rejected by the judge, as to the reading of the marriage settlement, should have been received, as we think it should, then it may become necessary to bring in review the questions made by the defendants' answer.

Was the marriage settlement duly and legally recorded in South Carolina. By the laws of South Carolina, see act of 1786 and 1823 marriage settlements, according to the first act, are required to be recorded in the office of the Secretary of State, and by the second act also in the office of Register of Mesne Conveyances, within three months after their execution, otherwise they will be regarded as void at law. The marriage settlement, in this case, was executed on 20 May, and if

Page 55 U. S. 255

recorded before 20 August, would have been duly recorded, according to the requirements of the act of 1786. It appears from Guiguard's official certificate that the paper was recorded in the Register of Mesne Conveyances on 31 July, 1816, the day on which it was proved by Young, one of the witnesses to it.

The certificate of Arthar, the Deputy Secretary of State, is not definite as to the time when the paper was recorded in the office of the Secretary of State. There is no doubt, however, that it had been first recorded in that office, as such should have been done, according to the act of 1786, which is the only act affecting this case. We think such must be the conclusion of the court, as scarcely any other fair inference could be drawn from the premises. If such should be the holding of the court a second proposition arises, was it necessary that it should have been recorded in Alabama?

According to the tenor of the decisions of this Court, it was not necessary that there should be such a recording to protect the rights of the complainants against the claims of a subsequent purchasers.

"A marriage settlement or deed, in favor of the wife, duly executed and recorded in Virginia, will be good against the creditors in the District of Columbia, although they may have had no express notice. [*Bank v. Lee*](#), 13 Pet. 119, [38 U. S. 120](#) . Such has been the current of decisions in South Carolina and Alabama?"

But the complainants have a right, from the proof in the record, to take refuge in the equity of their rights.

According to the evidence of W. R. Hamilton, Goree, the testator of defendants, who seems to have been a shopkeeper, purchased the slave in question, with express notice of complainants' title, by the marriage settlement of their mother with Yancey. The testimony of Hamilton was duly taken; for if defectively taken in the first instance, the defendants had an opportunity, and were required, to retake it, if they chose, by an express agreement of the parties.

Such being their condition -- that is, purchasers with express notice -- he, Goree, took the property subject to the acknowledged claims of the complainants, and having taken under their title, he should not be allowed to claim against it.

The doctrine of notice is well established. He who acquires a legal title, having notice of the prior equity of another, becomes a trustee for that other to the extent of his equity. [5 U. S. 1](#) Cranch 100.

If a man will purchase, with notice of another's right, giving a consideration will not avail him. 2 Bridgman's Digest Vendors and Purchasers, IX 691.

Page 55 U. S. 256

With respect to the operation of the statute of limitations upon cases of trust in equity, the distinction is if the trust be constituted by act of the parties, the possession of the trustee is the possession of the *cestui que trust*, and no length of such possession will bar; but if a party is constituted a trustee by the decree of a court of equity founded on fraud, or the like, his possession is adverse, and the statute of limitations will run from the time that the circumstances of the fraud were discovered. 2 Bridgman's Digest 252.

In the case of *Miller v. Kershaw*, marriage settlement was held void at law; in equity, however, the party claiming under the settlement, would be protected where the purchaser had actual notice of the settlement. Bayley's Equity 481.

If the foregoing propositions can be sustained, another question arises, and that is can the defendants claim to be protected by the statute of limitations? The complainants allege in their bill that they were minors at the death of their mother, and could not assert their rights under the marriage settlement as remaindermen after the death of Yancey, their step-father. They aver, furthermore, that they were ignorant as to the time of Yancey's death, from their distant and separated situations. It is also stated expressly in their bill, and it is a bill of discovery, that they were not informed as of the time when a fraud had been committed upon their rights, to-wit, when Yancey sold, and Goree purchased, with a full disclosure and knowledge of their title. This reduces the parties to the relation of trustee and *cestui que trust*, and exempts the complainant from the operation of the statute of limitations.

Purchaser from mortgagor, with notice, cannot claim by possession against a mortgage. *Thayer v. Craner*, 1 McCord 395.

Court of Equity, bound by statute, upon legal title and demands, except in cases which are excepted upon purely equitable principles, such as trust, fraud &c.;, *Van Rhyn v. Vincent*, 1 McCord 314.

In cases of fraud, it runs from the time the fraud has been discovered. *Id.*, 4 Dess. 480.

If one intrudes upon the rights of an infant, and takes the profits, he will be treated as guardian. His character is fiduciary; the statute of limitations is inapplicable, and lapse of time will not bar account. *Goodhue v. Barnwell*, Rice, Equity 239.

The ruling of the judge below was evidently in reference to a single question, in which he clearly was in error. But, independently of his decision, it may become the plaintiffs to satisfy this Court this, if he had all these questions before him, the defendants,

Page 55 U. S. 257

in any point of view, would have been entitled to a decree in their favor.

Therefore it becomes the complainants to show that they were entitled to a decree in their favor upon the entire merits of their case.

Page 55 U. S. 260

MR. JUSTICE DANIEL delivered the opinion of the Court.

The appellants, in the year 1847, filed their bill in the court aforesaid against the appellees, seeking of them a discovery as to certain slaves charged to have come to the possession of their testator, and also an account and a recovery of the value, increase, hires, and profits of those slaves, and claiming by name a negro woman named Linda or Linder, together with her children.

The bill charges that in the year 1816, Mrs. Ann Wood De Lane, a widow lady residing in the State of South Carolina, and possessed of valuable real estate, and of sundry slaves, being about to intermarry with one John Yancey, an antenuptial

contract was entered into and executed between these parties. The stipulations in this contract, which is made an exhibit with the bill, are to the following effect: that

"All the estate of the said Ann, real and personal, should be and remain for the joint use, support, and enjoyment of the said John and Ann during their joint lives, and to the survivor of them during his or her life; that the same should be free from any debts, dues, demands, or contracts of said Yancey, unless it should be under the following restrictions: that the said John Yancey

Page 55 U. S. 261

should not have the right to dispose of any portion of the estate or property, real or personal, unless the said Ann should consent thereto. That the said John should have the right to dispose of the property upon his obtaining such consent. That the said Ann should have the right of granting or withholding her consent without resorting to the aid of a court of equity, or to the intervention of a trustee. That all transfers by the said John of any portion of the property with the consent of the said Ann, should be valid, whether made for his separate use and benefit, or for the joint use of himself and wife; and that the said John should not be compellable to settle any equivalent for property so transferred, unless there should be a stipulation between the parties to that effect. That all of the estate, real or personal, which should remain undisposed of during the joint lives of the parties, should be for the use and benefit of the survivor; and at his or her death should be equally divided amongst all the children of the said Ann, both of this and of the former marriage. That none of the aforesaid estate, real or personal, should be liable for any debts, judgments, or executions, that might be in existence at the date of the contract, or at any time thereafter against the said John, unless by mutual consent of the parties."

The bill further charges that the marriage having taken place between the said Ann Wood De Lane and John Yancey, they removed to the State of Alabama, where the said Ann having died, the said Yancey, who survived her, sold to James L. Goree, deceased, either during the lifetime or after the death of the said Ann, but without her consent, and in violation of the antenuptial agreement, several of the

slaves mentioned in that agreement. That the said Philip H. De Lane, Martha Chiles, and Grace Lykes, who are the children of Ann W. De Lane, by her first marriage, and her only heirs, were, at the date of the sale aforesaid by Yancey, infants of tender years.

The bill makes no persons defendants, and seeks relief against none others, except the said Andrew B. Moore and James L. Goree, the executors of James L. Goree, deceased.

The respondents deny all personal knowledge of a purchase of slaves by their testator, of Yancey, but state that they have been informed, and believe, that the decedent did, in his lifetime, and in the lifetime of Ann W. Yancey, obtain from the said John Yancey, in the year 1822, a negro woman slave, named Lindy, and her child Becky, in payment of a store account contracted with the decedent, whilst a merchant in Alabama, by said John and Ann Yancey, for sugar, coffee, pork, butter, clothing, and other necessities for the support of the said John and Ann, and of the complainants, the children of the said Ann,

Page 55 U. S. 262

and of the slaves conveyed in the marriage settlement. The respondents deny that any slave mentioned in that agreement, except the woman Lindy, ever came to the possession of their testator, and after naming the offspring of Lindy, they aver that this female slave and her offspring were never held by the respondents in any other right than as the executors of James L. Goree, deceased; that long before the institution of this suit, the respondents, as such executors, had delivered over to the distributees of their testator, all the slaves held by them, had settled their account as executors, and received a discharge, viz., on the 2d day of January, 1846. Having made the above statements in answer to interrogatories put by the bill, the respondents propound these separate averments, and claim to be allowed the benefit of them as if specially pleaded.

1. That their testator was a *bona fide* purchaser of the slave Lindy for valuable consideration, without notice of the alleged marriage settlement.

2. That more than six years had elapsed between the death of Yancey, who survived his wife, and the commencement of this suit, and therefore the suit is barred by the statute of limitations.

3. That the said marriage settlement was made in the State of South Carolina, and was not recorded according to the laws of that state, and is therefore void, both as to the respondents and to their testator, who was a *bona fide* purchaser without notice.

4. That if the marriage settlement had been properly recorded, or was otherwise valid the sale of the slave Lindy was made with the assent of the said Ann Yancey.

5. That the respondents received the said slaves as the executors of the last will and testament of decedent, as a part of his estate, and had, before this suit was commenced, disposed of them according to the provisions of said will, by distribution and delivery to the legatees or said estate, and that long before the commencement of this suit, had made a final settlement of said estate, and had been discharged from said executorship.

To the answer of the respondents, the complainants filed a general replication, and upon the pleadings and proofs in the cause, the district court, on the 7th of December, 1849, pronounced a decree, dismissing the bill of the complainants, with costs. The correctness of that decree we will proceed to consider.

The first question which presents itself, in the natural order of investigation of the proceedings of the district court, is that which was raised upon the admissibility in evidence, of an authenticated copy of the antenuptial contract, upon the

Page 55 U. S. 263

sufficiency of the cause assigned for the nonproduction of the original. The cause so assigned, was this. The three children of Mrs. De Lane, with the husbands of the two daughters, depose that they never possessed, nor ever saw the original contract; that they have made diligent inquiry for it, but have been unable to learn either its present existence, or place of existence -- and believe that it has been

lost or destroyed. And the son, Philip De Lane, states farther, that he had made inquiry for it, first of John Partridge, his guardian, who informed him that he had never been in possession of it, and did not know where it was; that deponent had also made inquiry for it at the Office of Mesne Conveyances, and at the Office of the Secretary of State of South Carolina, but upon search and inquiry it could not be found at either of those places, and he believes that this instrument was either destroyed by said Yancey, or by fire when the courthouse in Monroe County, in Alabama, was burned in 1833 -- that the subscribing witnesses to the agreement, he believes, after diligent inquiry, are dead. That Yancey died in 1836, in Mississippi, utterly insolvent, and no person ever administered on his estate. In disregard of these affidavits, the district court refused to consider the copy of the antenuptial contract as legal or admissible in the absence of the original, and in this refusal, we think that court has erred. Upon the most obvious principles of reason and justice, we think, that the complainants could not have laid a stronger foundation for the introduction of the secondary proof. The custody of the original document, or the duty of preserving it, could in no view be brought home to them. And its absence, therefore, over which they could have had no control, and produced by no default of theirs, should not have deprived them of the effect of that document to avail for whatever it might be worth. This view of the question before us, is strengthened by the obvious considerations, that no suspicion justly attaches to the complainants from the nonproduction of the original agreement, and that its exhibition was calculated rather to corroborate, than to weaken their claims. The instances in which secondary evidence is to be admitted, and the requisites demanded by the courts to warrant its introduction, are treated of in the elementary works on evidence, as for instance, in 2 Saunders on Pleading and Evidence 833 *et seq.* But in a decision of this Court, this subject has been dealt with in a manner so strikingly apposite to the question now before us, as to warrant particular notice thereof, as being in all respects, decisive of that question. We allude to the decision of [Tayloe v. Riggs](#), reported in 1 Pet. 591. That case presented by no means so strong a claim for the introduction of secondary evidence as does the

one now under consideration, for that was an application for leave to substitute parol for written evidence, and not for the substitution of an authenticated copy of a written and recorded document in lieu of the original. In *Taylor v. Riggs*, the Chief Justice lays down the law as follows:

"The rule of law is that the best evidence must be given of which the nature of the thing is capable -- that is that no evidence shall be received which presupposes greater evidence behind in the party's possession or power. The withholding of that better evidence raises a presumption that if produced, it might not operate in his favor. For this reason, a party who is in possession of an original paper or who has it in his power is not permitted to give a copy in evidence or to prove its contents. When, therefore, the plaintiff below offered to prove the contents of the written contract on which this suit was instituted, the defendant might very properly require the contract itself. It was itself superior evidence of its contents to anything depending on the memory of a witness. It was once in his possession, and the presumption was that it was still so. It was necessary to do away this presumption, or the secondary evidence must be excluded. How is it to be done away? If the loss or destruction of the paper can be proved by a disinterested witness, the difficulty is at once removed. But papers of this description generally remain in possession of the party himself, and their loss can in most instances be known only to himself. If his own affidavit cannot be received, the loss of a written contract the contents of which are well known to others or a copy of which can be proved would amount to a complete loss of his rights, at least in a court of law. The objection to receiving the affidavit of the party is that no man can be a witness in his own cause. This is undoubtedly a sound rule which ought never to be violated. But many collateral questions arise in the progress of a cause to which the rule does not apply. Questions which do not involve the matter in controversy, but matters auxiliary to the trial, which facilitate the preparation for it, often depend on the oath of the party. An affidavit of the materiality of a witness, for the purpose of obtaining a continuance, or a commission to take a deposition, or an affidavit of his inability to attend, is usually made by the party, and received without objection. So affidavits to support a motion for a new trial are often received. These cases, and others of the same character which might be adduced, show that in many

incidental questions that are addressed to the court, and which do not affect the question to be tried by the jury, the affidavit of the party is received. The testimony which establishes the loss of the paper is addressed to the court,

Page 55 U. S. 265

and does not relate to the contents of the paper. It is fact which may be important as letting the party in to prove the justice of the cause, but does not of itself prove anything in the cause. As this fact is generally known only to the party himself, there would seem to be a necessity for receiving his affidavit in support of it."

The law, as thus clearly declared by this Court in *Taylor v. Riggs*, is in strictest accordance with the rule prevailing in the supreme court of the state within which the case before us was decided. Thus, in the case of *Sturdevant v. Gaines*, reported in the 5th vol. Alabama Reports 435, that court thus announces the rule by which they are governed with respect to the introduction of secondary evidence.

"In the recent case of *Jones v. Scott*, 2 Ala. 61, it is stated that no fixed rule can be laid down as applicable to this class of cases; that in general search must be made where the lost paper was last known to be. These remarks are quite applicable to this case. Search was made where the paper was last known to be only three days before."

Again:

"We cannot say that half an hour's search in a lawyer's office was not sufficient to ascertain whether the paper was not where it was left, nor, in the absence of any fact indicating that it might be found elsewhere, can we perceive that there was any necessity to search elsewhere for it. If the admission that the paper, on further search where it was last known to be or elsewhere, might still be discovered would preclude the secondary evidence, it would annihilate the rule in all cases where the lost paper was not proved to be destroyed as well as lost, as otherwise there must always be a possibility that it may be found."

With regard to the position insisted upon in the answers that the antenuptial contract was void for the failure to record it within three months from its date in conformity with the law of South Carolina, that position, however maintainable it might be so far as the instrument was designed to operate by mere legal or constructive effect on creditors and purchasers, becoming such before it was recorded, or, in the event of its never being recorded, cannot be supported to the extent that by the failure to record it within the time prescribed by the statute, the deed would thereby be void to all intents and purposes. Such a deed would, from its execution, be binding at common law *inter partes*, though never recorded, and if, after expiration of the time prescribed by statute, it should be reacknowledged and then recorded, either upon such reacknowledgement or upon proof of witnesses, it would, from the period of that reacknowledgement and admission to record, be restored to its full effect of notice, which would, by construction, have followed from its being recorded originally within the time

Page 55 U. S. 266

prescribed by law. These conclusions are sustained by numerous decisions. We refer in support of them to the cases of *Turner v. Stip*, 1 Wash. 319; *Currie v. Donald*, 2 Wash. 58; *Eppes v. Randolph*, 2 Call 125; *Guerrant v. Anderson*, 4 Ran. 208; *Roanes v. Archer*, 4 Leigh 550; [*Woods v. Owings & Smith*](#), 1 Cranch 239; [*Lessee of Sicard v. Davis*](#), 6 Pet. 124.

The antenuptial agreement between Ann Wood De Lane and John Yancey is proved to have been executed on the 20th day of May, 1816; if it was admitted to record at any time before the 20th of August in the same year, it operated as notice to all creditors and purchasers becoming such subsequently to the execution of that agreement; if it was not recorded until the 14th of November in the year 1816, it could be construction operate as notice from the latter period only, but as between the parties, and with regard to subsequent creditors and purchasers with notice, it operated from the period of its execution. The sole purpose of recording the deed is that those who might deal with the parties thereto or with the subjects it comprised should have knowledge of the true condition of both, and if such knowledge is presumed -- nay, established by legal inference

from the fact that the deed has been recorded -- *a fortiori* it must be established by actual notice.

It has been made a ground of defense in the answers in the court below, and it has also been insisted upon in argument here, that admitting the antenuptial contract to have been recorded in the State of South Carolina, and in consequence thereof to have been so operative as to affect with notice creditors and purchasers within that state, yet that upon the removal of the parties, carrying with them the property into another state or jurisdiction, the influence of the contract, for the protection of the property, would be wholly destroyed, and the subject attempted to be secured would be open to claims by creditors or purchasers subsequently coming into existence. The position here advanced is not now assumed for the first time in argument in this Court. It has upon a former occasion been pressed upon its attention and has been looked into with care, and unless it be the intention of the court to retrace the course heretofore adopted, this may be now, as it formerly was, called an adjudged question. The case of the [*United States Bank v. Lee*](#), 13 Pet. 107, brought directly up for the examination of this Court the effect of a judgment and execution obtained by a subsequent creditor in the District of Columbia upon property found within that district, but which had been settled upon the wife of a debtor by a deed executed and recorded in Virginia according to the laws of that state, the husband and wife being, at the time of

Page 55 U. S. 267

making the instrument, inhabitants of the State of Virginia. The question was, by MR. JUSTICE CATRON, who delivered the opinion of the Court, elaborately investigated and the cases from the different states, founded upon their registry acts, carefully collected. The cases of *Smith v. Bruce's Administrator*, from 2d of Harris & Johnson and of *Crenshaw v. Anthony*, from Martin & Yerger's Reports 110, cited by the learned judge, fully sustain his reasoning upon the point. This Court come unhesitatingly and clearly to the conclusion that the deed of settlement, executed and recorded in favor of Mrs. Lee in conformity with the laws of Virginia, protected her rights in the subject settled against the judgment of the

subsequent creditor in the District of Columbia. We should not be disposed to disturb the doctrine laid down in the case of *Bank of the United States v. Lee* and in the decisions of the state courts of Maryland and Tennessee above mentioned if the rights of the parties turned upon the operation of the contract as constituting notice, or upon the proof of knowledge on the part of Goree, the purchaser from Yancey, of the existence of the marriage contract. But we think that the rights of the parties to this controversy should not be made to depend upon any such incident as the existence of notice of the contract, either actual or constructive.

It has been premised in the statement of the pleadings in this case that the only defendants in the court below were the executors of James L. Goree, deceased, called upon in their representative character, and in no other. The marriage contract between Ann W. De Lane and John Yancey was executed in 1816. It is proved that Yancey died in 1833, or 1834. The complainants are the children of Mrs. Yancey by her first marriage, so that at the time of the death of Yancey, the youngest of those children, if born immediately preceding the second marriage, could not have been younger than seventeen years; the elder children were then probably nearly or fully at majority. After the death of Yancey, the record discloses no claim on the part of the complainants, nor any effort by them to recover the property settled by the contract earlier than 1842, eight or nine years after Yancey's death; at which last period, it is said, there was a suit pending in one of the state courts, against the testator of the appellees, but which suit, after being revived against the appellees, subsequently to the death of their testator, was, in the year 1843, dismissed for the want of prosecution. The bill in this suit was filed in January, 1847, at an interval of thirty-one years after the execution of the marriage agreement and of fourteen years after the death of Yancey, from which last event the complainants had an undoubted and unobstructed

Page 55 U. S. 268

power to seek their rights under that contract, whatever they were.

If mere tardiness in asserting their pretensions were all that could be imputed to the appellants, this of itself would place them in a position which could not

commend them the countenance of courts of justice; but this delay is by no means the only or the least imputation resting upon the course of the appellants, for we see that after calling upon the appellees for satisfaction of their demand, the appellants abandoned that demand, proclaiming thereby to the representatives of Goree, if indeed they were then in possession of the subject, permission to apply it in conformity with the will of their testator. The appellants, it is not pretended, ever held or claimed the subject in dispute, except in their representative capacity and in trust for the creditors and legatees of their testator. In the interval between the abandonment of their first and the institution of their second demand by the complainants, those executors have, in fulfillment of their trust, handed over the subject to those for whom they held it under the will, have accounted with the authorities to whom they were responsible, and have received from those authorities a full acquittance. Under these circumstances, to hold them liable to the demands of the appellants would in effect be to render penal the regular discharge of their duty.

This aspect of the cause we regard as fully warranting the decree of the district court dismissing the bill of the complainants -- that decree is therefore

Affirmed.

ORDER

This cause came on to be heard on the transcript of the record from the District Court of the United States for the Middle district of Alabama, and was argued by counsel. On consideration whereof, it is now here ordered, adjudged, and decreed by this Court that the decree of the said district court in this cause be and the same is hereby affirmed with costs.