Whyte, Isaac T. vs. Hopkins, George B. admn. of Bennett, A.G. 1855 Callaway Co. 2nd Cir. 214/4

Old 74/23

No opinion found
B indebted to W for wages & payment for 1/4 of steamboat
Statute of limitations had run out 3 yrs 6/f

THE STATE OF MISSOURI, ss.

The State of Missouri, To the Judge of the second Judicial Circuit in said State, GREETING:

WHEREAS, In the Record and Proceedings in a certain cause lately pending in the Circuit Court of Callaway County in the second Judicial Circuit aforesaid wherein Isaac T Whyte was plaintiff and Geo. B Hopkins, adm. of A G Bennett, deceased was defendant.

in an action of ..... manifest error hath intervened, to the great damage of the said plaintiff as by his complaint, we are informed.

NOW, we being willing that the error, if any there be, should be corrected, and full and speedy justice done to the parties aforesaid, in that behalf, COMMAND YOU, that you send to us, certified under your seal, the record and proceedings in the cause aforesaid, as fully as the same remain of record before you in said Court, so that we may have them before us at our Supreme Court, to be begun and held at the City of Jefferson, in the county of Cole, in said State, on the second Monday in January next, so that our Judges of our Supreme Court, on inspecting the record and proceedings aforesaid, may cause to be further done therein, for correcting the error, what of right and according to law ought to be done.

Witness, WILLIAM E. DUNSCOMB, Clerk of our said Supreme Court, at office, in the City of Jefferson, the fourteenth day of December in the year of our Lord one thousand eight hundred and fifty five

Wm E Dunscomb

SEAL OF THE SUPREME COURT OF MISSOURI

Rec'd 17th December 1835 Executed

Given under my hand and
Official seal as clerk of
the Court of Callaway County
19th Dec 1835
Geo Bartley Clk

State of Missouri Callaway County ss.
In the Circuit Court
April 17th 1855.

Isaac N. Whyte Pltf
against
Geo. B. Hopkins Admr of A. G. Bennett dcsd
upon an appeal

The parties appear and give their oral consent in court to a trial by the Court. Whereupon the Court finds the following facts; that Bennett was indebted to Whyte in 1846. in the sum of ninety six dollars & ninety nine cts for wages - and for one hundred & twenty one dollars & forty four cts, being the one fourth of a part payment for a Steam Boat used by Bennett of which Plaintiff was the 1/4 owner. That Whyte agreed to wait for the payment until he could collect a note due for the balance of the Steam Boat which had been sold, that Whyte brought suit on said note and prosecuted the payer to insolvency, that his insolvency was ascertained in 1849. Whereby Bennett became indebted at that time for the above amount. That Bennett became further indebted to Whyte on the 26th March 1850. for the three fourths of the fee paid to the Lawyer for suing on the note being thirty seven & a half Dollars the whole fee being fifty dollars and for $1.22 for Postage at the same time paid. That Bennett died in 1846. That Whyte gave notice to the Admr of Bennett of his claim against Bennett, of which the service was on the 3d day of August 1853. the defendant

2 having plead all the Statute of limitations the Court finds that three years have elapsed since the rendition of Bennetts admr account and renders Judgment for the defendant Thereupon it is adjudged by the Court that the plff take nothing by his appeal, but that the defendant recover of the plff and John Hockaday & David M. Whyte his securities in the appeal bond his costs by him about his defence in this behalf expended and that he have execution

State of Missouri Callaway County ss
I, Geo Bailey clerk of the Circuit Court in and for the County of Callaway aforesaid do hereby certify that the foregoing ten pages contains a true and complete copy of the finding and Judgment of the Court rendered in the case of Isaac N. Whyte against Geo B. Hopkins admr of A. G. Bennett dec'd and the same, together with the Record now on file in the Supreme Court, is a true and complete copy of the record and papers in the said cause as fully as the same appears upon record in my office
Given under my hand and official seal at office this 19th day of December 1855. Geo. Bailey clk

68 ~~13~~ ~~XX~~ ~~XX~~

Jan 7 1857

13, 15, 16, 17, 18, 20

Isaac T. Whyte p.e.

vs } Record

Geo. B. Hopkins Admr

of A Bennett decd.

Ead.

Fee $1.50

Geo Barty ecto

filed Dec. 22 1855

Wm E Dunscomb

Clerk

Callaway

2nd

Isaac I Whyte appellant
against
George B Hopkins admr of the
estate of A G Bennett dec'd respondent

In the Supreme Court
January
Term
1856

And now at this day comes the appellant by his attorney and says that in the record & proceedings aforesaid as well as in the rendering of the judgment therein, there is manifest error in this to wit. The Court disallowed the account of plaintiff under the plea of the limitation of three years in the administration act of 1845 4th Art & 2nd Section thereof whereby the law of the land the same ought to have been allowed, that act not applying in this case. Wherefore for the errors aforesaid & other errors in the record & proceedings manifestly appearing, the appellant prays that the judgement aforesaid be reversed & that he be restored to all that he has lost in the premises &c

Isaac I. Whyte
By J. T. Jones atto

Whyte vs Bennett
Assignment
of
Error

J F Jones

Filed day. 17. 1856
Wm E. Dunscomb
Clerk

1 Isaac J White plaintiff.

Against George B Hopkins. Administrator of the Estate of Anson G Bennett deceased defendant.

Supreme Court.

January Term 1856.

At the June Term 1852 of the Callaway County Court, the plaintiff filed his account against the Estate of Anson G Bennett, deceased, and the Cause was continued until the 2nd day of the November Term of the same year, at the instance of plaintiff.

On the 3rd day of August 1853, the following Notice was served on Geo B Hopkins, Admr as aforesaid.

To George B Hopkins Administrator of the Estate of Anson G Bennett deceased.

Take Notice that I will present for allowance at the next Term of the County Court of Callaway County, Missouri, to be holden at the Court house in the Town of Fulton in said County, on the third Monday in August next, a demand against said Estate, founded on an account which accrued to me in my own right, and of which the following is a true Copy.

Yours,

Anson G Bennett Dr

To Isaac J White.

1845	To balance due me for Wages as Clerk on Steam Boat "Marie of Osage"	$ 96.99
1847	Cash paid for postage,	1.50
1850	W J Harrison Atty fees	50.00
1846	1/4 of 485 76/100 dollars as	

2 my part of the Sale of said Bout 121.44

$269.93

Total Two hundred and Sixty nine dollars and 93 cents. May 30th 1853,

Isaac T White

By J F Jones Atty.

Upon which Notice the following return was made. — Came to hand August 2nd 1853 and Executed by handing to Geo B Hopkins Administrator of the Estate of Anson G Bennett decd a true Copy of the within Notice and account at his residence in Cote Sandepsin Township in Callaway County Mo. on Wednesday the third day of August 1853. — James Sanders

C C T. C C. Mo.

At the February Term of the said County Court, 1854, the Court, after hearing the evidence in the Cause, considered the Claim as barred by the Statute of Limitations, which requires all Claims to be presented within three years after granting Letters of Administration, and gave Judgment accordingly. From which Judgment the plaintiff appealed to the Circuit Court of said County.

And at the October Term, 1854, of the said Circuit Court, the Cause was submitted to the Judge of said Court, by the Consent of parties, who having

3 heard the evidence in the Cause, rendered a Judg=
=ment for defendant, as follows

Whyte
vs
Hopkins Admr of Bennett.

This Cause being submitted to the Court, the Court finds, that Bennett was indebted to plain=
=tiff in the Sums sued for, and that said ac=
=Count was not presented for allowance within three years of the time at which they became due, and therefore renders Judgment for dft.

The plaintiff files his Motion for a New Trial, as follows.

Isaac Whyte.
vs
G B Hopkins Admr. of the Estate
of Anson G Bennett deceased.

In the Circuit Court,
Callaway County, Oct Term
1854.

Plaintiff moves the Court to set aside the finding in the above Cause, and grant him a New Trial, for the reason, that the Court sitting as a Jury found against Law, and against evidence, and the weight of evidence. and for other reasons.

Isaac T Whyte
By J F Jones Atto.

which motion being Considered by the Court, was overuled, and thereupon plaintiff produced his Bill of Exceptions, which being examined by the Court,

4 was allowed, signed, sealed, and made a part of the record in the Cause.

At the Trial, the plaintiff introduced as a witness, Daniel M Blyth, who stated, that plaintiff and deceased, were the joint owners of a Boat, called the "Maid of Osage". that plaintiff owned 1/4 and said deceased 3/4 thereof. that plaintiff have ban, and was running said Boat up to 1846, or thereabouts. that in 1846, deceased told plaintiff to take said Boat to the South, and sell or barter it. & that plaintiff might be able to sell said Boat, the said Bennett told him he would give him a Bill of Sale in his own name, which he did accordingly. that plaintiff took said Boat south and sold her for some $400 dollars. that he received 485.74/100 dollars down, and took the Note of the purchaser (who was supposed to be good) for the remainder; that the note was taken in the name of plaintiff. that on the return of plaintiff, he reported the result of the Sale to deceased, who was will satisfied therewith. that deceased then told plaintiff, as he needed money, and plaintiff did not, he wished he plaintiff, would let him have all the money received on the sale of said Boat. and that he hoped he plaintiff would wait until the Note was collected, when he could take his 1/4 part of his entire interest in the Boat, out of said Note. deceased also told plaintiff, that he also owed him, plaintiff, ninety six dollars and 99 cents for Wages, before that time rendered to him, Bennett on said

5 Bout, and that he hopne he would also wait
for that, until the collection of saide Note, when
he could pay himself out of deceased part of said
Note. to these requests plaintiff agreed. that
Bennett died in Septembr 1846. that Administra=
=tion on his Estate was not had until the 5th
day of December 1846. that in the meantime,
plaintiff sent saide Note to New Orleans, when,
and where it was payable, that it was protested
and returned to plaintiff. that plaintiff then
handed saide Note over to the Admr of Bennetts
Estate, who kept it about Ten days and returned
it to plaintiff, saying, that as saide Note was in
the name of plaintiff, he, (saide Admr) could &
would have nothing to do with it. that plain=
=tiff then sent saide Note to one Maddy & Harrison,
an Attorney, for Collection. that he bought suit
on it, and got Judgment against the Obligor.
that the Obligors Estate was incumbered with
Mortgages and other Liens, perhaps having prior
=ity over the Judgment of plaintiff. and that
the inability of saide Obligor to pay any thing on
the Judgment of plaintiff, was not ascertained
until some time in 1849, when to the Attorney
of plaintiff. that plaintiff and Attorney wrote
several Letters to saide Attorney in reference to the
prospect of making saide debt. but that they
did not receive any Answer Concerning the same,
until the 26th of March 1850. when saide Attorney
told plaintiff for the first time, that nothing had
been made or could be made, on saide Judgment.
and this was the first information plaintiff

6 had of the Insolvency of said Obliger in said Note. that the Attorney's fee in said Case was $50- which witness then paid him for plaintiff. that the postage on letters, which he witness wrote to & received from said Attorney in attending to said business, amounted to $1\frac{50}{100}$ dollars, which was paid for plaintiff. Witness also states that he knew all the Items in the account filed, to be correct.

Plaintiff then produced and read the Deposition of Waddy T Harrison, as follows.

Waddy T Harrison being produced sworn and examined on the part of the plaintiff deposeth and says, "that, the instrument of writing marked "A", is a Transcript of the Judgment obtained by him in the parish of Madison, in the State of Louisiana Oct 28th 1848, against Wm L Patterson in favor of J T Whyte, his fee in the Case was fifty dol=lars, and was paid by either Isaac or D M Whyte. deponent corresponded with both about the busi=ness through the Messrs Crow McCreary and Barks=dale of St Louis. I G Futwell had left the parish of Madison before I went to it which was in May 1845. and was notoriously insolvent. at the date of the Judgment against Patterson, his property was so deeply encumbered by Mort=gages, which by any possibility or degree of diligence, must have had priority of the claim of Whyte, it was thought useless to have Execution issued, as a Sale of his property in January or Febru=ary 1849 disclosed. As to the date of the sale, witness wishes it understood that he speaks from

7 the best of his recollection. when witness ascertained that there was no Chance to make the money of Patterson, he wrote to either Isaac or D. M. Whyte of the fact. the date of the Letter he does not recollect, as he did not think it important to give them, or either of them, the earliest Notice of the fact.

Signed Reddy J Harrison.

The following is a Copy of the Note, and Judgment, thereon,

New Orleans March 26th 1846.

$ 939.77.

Ten Months after date We or either of us promise to pay to the Order of I J Whyte the Sum of Nine hundred & thirty Nine dollars and seventy seven Cents. payable at the Counting Room of John Re Shaw & Co in the City of New Orleans, & bearing interest at eight per Cent from date until paid for value received.

Wm Lindsay Patterson
I J Whyte.

(Endorsed) I J Whyte.

Judgment

Isaac J Whyte
vs
Wm L Patterson

3 Parish of Madison

By reason of the Law and the evidence in this Case being in favor of Plff, it is ordered that Plff have Judgment for the Sum of Nine hundred & thirty Nine

& dollars and seventy seven cents. ($333.77.)
with eight per cent per Annum, interest,
from March 26th 1846. and the cost to be taxed.
Signed in open Court this 28th day of Oct
1848.

Louis Selby
Judge 10th District.

Plaintiff then showed by an Endorsement of the
Clerk of the County Court of Callaway County,
upon the back of the account, upon which
this action is founded, that said account
was sworn to and filed at the June Court
for the year 1852. and thereupon rested his
Case.

The Defendant then produced and read the
Notice to the Admr of Bennett, and the time
of its service upon said Admr, which was dat-
-ed the 3rd of August 1853. (See page 1 of Brief)
and thereupon plaintiff produced and filed
his Motion for a New Trial, which being con-
-sidered by the Court, was overruled. (See
page 3 of Brief) Plaintiff filed his Bill of
Exceptions, and the Case was taken by Ap-
-peal to the Supreme Court by Writ of Error,
and at the January Term 1855 of said Court
the following Decision was made,

Isaac T Rhyte, Plaintiff in Error.
vs } Error to the Callaway Circuit Court.
J B Hopkins defendant in Error.

Scott Judge delivered the Opinion of the Court.

9 This Cause was tried by the Court without a Jury. as no facts were found, as required by Law in such Cases, the Judgment will be reversed and the Cause remanded. Judge Ryland Concurring.

And at the April Term 1855 this Cause being again submitted to the Court, the Court finds the following facts.

That Bennett was indebted to White in 1840 in the Sum of Ninety six dollars & Ninety nine Cents, for Wages, and for ($121.44) One hundred and Twenty one dollars and forty four Cents, being the one fourth of a part payment for a Steam-boat owned by Bennett of which plaintiff was the 1/4th owner. that White agreed to wait for the payment until he could Collect a Note due for the balance of the Steam-boat, which had been sold. that White brought suit on said Note, and prosecuted the Payor to insolvency. that his insolvency was ascertained in 1849, whereby Bennett became indebted at that time for the above Cents. That Bennett became further indebted to White on the 26th day of March 1850 for the three fourth of the fee Paid to the Lawyer, for suing on the Note, being thirty seven & a half dollars. the whole fee being fifty dollars and $1 27/100 for postage at the same time paid. That Bennett died in 1846. that White gave Notice to the Admr of Bennett of his claim against Bennett of which the service was on

the 3rd of August 1853. The defendant having plead all the Statutes of Limitations, the Court finds, that three years have elapsed since the indebtedness of Bennett's Admr. accrued, and renders Judgment for the defendant. thereupon it is adjudged by the Court that the plaintiff take nothing by his Appeal, but that the defendant recover of the plaintiff and John Hockaday & Danl. M Whyte his security in the Appeal Bond his costs by him about his defence in this behalf expended, and that he have Execution.

And the Case is again brought to the Supreme Court by Writ of Error.

And afterwards at the January Term of the Supreme Court 1856, the Plaintiff filed the following Motion.

Whyte
vs }
Hopkins Admr. of Bennett
In Sup. Ct. Jany Term 1856

The Transcript of the Clerk is wrong in this, towit. In the finding of the Court it says Bennett was indebted to Whyte in 1840, whereas it should be in 1846.

2nd The Insolvency of the maker of the Note set out in the petition, is said to have been ascertained in 1849, when in fact it was not discovered until the 26th of March 1850.

That Whyte filed his a/c in the County Court in June 1852 & gave Notice in August 1853. J F Jones Atty
for Whyte.

And in conformity with the suggestion in said Motion a writ of ~~Exxx~~ Certiorari was issued by the Supreme Court

rected to the Judge of the second Judicial Circuit, stating that the said record as suggested by Plaintiff is imperfect, insufficient, and diminished And whereas, our said Court is not satisfied that the said record Contains a full, true, and Complete Transcript of the proceedings had before you in said Cause.

These are therefore to command you that you send up to our Supreme Court on or before the first day of the next Term thereof to be held at the City of Jefferson on the first Monday in July next a full true and Complete Transcript of the record and proceedings had before you in said Cause certified under the seal of your said Court, so that our said Supreme Court may proceed to do justice therein between the parties &c.

And afterwards at a Circuit Court Continued & held for Callaway County at the Court House on Monday the 21st day of April 1856, the Court this day Corrected the finding of the Court in this Cause, and the Clerk is ordered to correct the same as entered upon the record at

the April Term 1855 so as to conform with the present finding, which is done,

The following is the finding of the Court at the February Term 1855 as corrected at the April Term 1856.

Afterwards at a Circuit Court continued and held for Callaway County at the Court house on Tuesday the 17th day of April 1855, the parties appear and give their Oral Consent in Court to a Trial by the Court, whereupon the Court finds the following facts.

That Bennett was indebted to Whyte in 1846 in the Sum of Ninety two dollars, and Ninety nine Cents for wages, and for $121.44 being the 1/4 of a part payment for a Steam-boat owned by Bennett of which plaintiff was the 1/4 owner. That Whyte agreed to wait for the payment until he could collect a Note due for the balance of the Steam-boat which had been sold. That Whyte brought suit on said Note and prosecuted the Payor to Insolvency in 1849, & that thereby his Indebtedness was ascertained by the

Attorney. Plaintiff's Attorney notifies Plaintiff of the fact March 26th 1850, whereby Bennett became further indebted to Whyte on the 26th of March 1850 for the 3/4 of the fee paid to the Lawyer for suing on the Note, being $37 50/100, the whole fee being $50, and for $1,12½ for postage at the same paid. that Bennett died, in 1846. that Whyte gave Notice to the Admr of Bennett of his claim against Bennett of which the Notice was on the 3rd of August 1853. The defendant having pleaded all the Statutes of Limitations the Court finds that three years have elapsed since the indebtedness of Bennett, Admr accrued and renders Judgment for defendant. — Whereupon it is adjudged by the Court, that plaintiff take nothing by his appeal, but that the defendant recover of the plaintiff & John Hockaday & Danl. M Whyte his securities in the appeal bond his cost by him about his defence in this behalf expended, and that he have Execution.

Defendant says that the whole of the proceedings in the above Cause at the April Term 1856 of the Calloway Circuit Court were Ex parte and without any Notice to Defendant, that they were Entered Judgment & are not in accordance with the Decision given by the Supreme Court which was that the Clerk should send up a true and perfect Copy of the Record in the Cause, but an altered Copy of the finding of the Court at the April Term 1855 has been substituted in the place of the Original finding at that Term and the Clerk ordered to Change the Record in accordance therewith which has been done accordingly. See Record page 18 & 19. filed in the Supreme Court June 18th 1856.

1st " The Ninety six $\frac{93}{100}$ dollars claimed for Wages by Isaac Whyte in 1845, as Clerk on the Steam-boat, Maid of Osage, is barred by the general Statute of Limitations.

2nd " The 1/4 part of $485 $\frac{76}{100}$ dollars, as claimed by plaintiff as paid to Bennett in 1846, as received on Sale of said Boat, is barred by the general Statute of Limitations.

3rd " The One dollar and fifty Cents paid for postage in March 1850, is barred by the general Statute of Limitations.

4th " The fifty dollars paid as Attorney fee in March 1850, to Waddy T Harrison, could not draw the other Items of the account out of the Statute of Limitations, as there were no mutual accounts between said Whyte and Bennett, nor is there any evidence of the time, when said fee was paid.

5th " There is no evidence in writing, of any new, or Continuing Contract, between Whyte and Bennett, with respect to the collection of said Note, and the suspension of payment of the amount owed by Bennett to Whyte. it was his own voluntary act, and did not suspend the Statute of Limitations upon his claim against Bennett, or Bennetts Administrator. he sold the Boat himself, took the Note in his own name, and re-

12 Said upon said Note for the payment of his wages, and his share of said Bond - the principal and security in said Note, where hopelessly, if not notoriously, insolvent, at the time of taking said Note.

6th " Judgment was rendered on said Note against Patterson on the 28th day of October 1848 (See the record of Judgment &c) the Insolvency of Patterson was fully known to plaintiff's attorney, in January or February 1849. Indeed, was known before the Note was put in suit (See the Deposition of Maddy J Harrison Atty &c) and on the 26th of March 1850, plaintiff was informed by said Attorney, of the impossibility of satisfying said Judgment out of the property of said Patterson, as it was covered with Mortgages, which held priority over said Judgment of plaintiff.

7th " On the 24th day of June 1852, plaintiff filed the above account against the Estate of Anson G Bennett, deceased, in the County Court of Calloway County. said account was sworn to and Continued by plaintiff, and no further proceedings in the Cause appear upon the record of said Court, until the 16th day of August 1853, when on the motion of the Administrator of Bennett's Estate, the Cause was Continued until the 2nd day of the next November Term of said Court. the said Administrator having been sworn with Notice of the filing said account,

13 on the 3rd day of August 1853, which was more than three years from the 26th day of March 1850, the time that plaintiff was apprised by his Attorney, Waddy T Harrison, of the Insolvency of said Patterson, and therefore the accounts were barred by the Special Statute of Limitations, which requires all claims to be presented within three years or be forever barred.

8th " Bennett died in September 1846, and Letters of Administration were granted upon his Estate in December 1846 to Geo B Hopkins. the whole account, except that part of it paid to the Attorney Waddy T Harrison, is barred by the general Statute of Limitations. as follows,

"In actions of debt or upon the Case, founded upon any Contract, no acknowledgment or promise hereafter made, shall be evidence of a new, or Continuing Contract, whereby to take any Case out of the operation of the provisions of this Act, or deprive any party of the benefit thereof, unless such acknowledgment or promise be made or Contained by or in some writing, subscribed by the party Chargeable thereby. Statute of Limitations 1845 page 720. Article 3. Section 13.

9th " The fifty dollars paid in 1850, to Waddy T Harrison for Attorney's fee, cannot take those Items in the account, that are of a longer standing than five years, out of the Statute of Limitations. "Items in an account Charged within six years do not take Items Charged more than six years

14 upon suit
out of the Statute of Limitations, unless there are
mutual accounts between the parties. 2 U S Digest
page 813 Section 459.

If mutual dealings between party and party, if
there be Items on both sides within six years, the
Statute of Limitations does not attach to those
of an earlier date. 2 U S Digest page 813 Sect 461.

If there be one Item in defendants account,
within six years, this will take the account
of the plaintiff out of the Statute, though the
Latter contain no Item within that period.
2 U S Digest page 813 Sect 462.

Where those Items of a partys account, which
are within six years, show no credits by him,
nor Charges of the other party, they will not take
the other Items out of the Statute.
2 U S Digest page 813 Sect 463.

Mutual accounts, are, where each party has an
open unsettled account against the other, existing
at the same time, and existing together, a
demand on the part of the defendant, aris-
-ing subsequent to that of the plaintiff, can-
-not be regarded as a mutual account.
2 U S Digest Supplmt page 365 Sect 382.

15 Judgment was rendered against Patterson in Oct 1848, his Insolvency known to plaintiffs Attorney in Feby 1849, and to plaintiff in March 1850, and Notice of filing the account, not served upon the Administrator of Bennett until &c the 3rd day of August 1853, which was more than three years after he knew of the Insolvency of Patterson, therefore the whole claim is barred by the Special Statute of Limitations.

"All demands not exhibited within three years, shall be forever barred, saving &c ——
Statutes 1845, Administration, page 91 Sect 2.

Any person may exhibit his demand against such Estate, by serving upon the Executor or Administrator, a Notice in writing, stating the Nature and amount of his Claim, with a Copy of the Instrument or account upon which the Claim is founded; and such Claim shall be considered legally Exhibited from the time of serving such Notice.

Statutes of 1845, Administration, page 91 Section 5.

Isaac Whyte plaintiff.
Against

George B Hopkins Admr of Bennett,
defendant.
Brief by Thomas Ansell:

Isaac T Whyte
v
Geo B Hopkins
admr of A Bennett

Brief for admr
by Ansell

filed July 9 1856
Wm E Drinscoat
Clerk

Isaac T Whyte appellant
against
Geo B Hopkins admr of
the estate of Anson G Bennett
decd

In the Supreme Court January
Term 1857

And now at this day comes the appel-
-lant by his attorney and says that in the
record & proceedings aforesaid as
well as in the rendering of the judgment
aforesaid there is error in this to wit
The court rendered judgment for
the defendant whereas by the law of
the land the court ought to have found
for the plaintiff. the Special Statute
of limitation of 3 years not apply
-ing in this case, wherefore for
the error aforesaid & other errors
in the record & proceedings manifest
-ly appearing the appellant prays that
the judgment aforesaid may be
reversed & he be restored to all things
that he has lost by reason of the
premises

J. F. Jones atty
for Plaintiff &
appellant

Whyte
vs
Assignment of
Errors
Hopkins adms of
Bennett

Filed Jany 14. 1857
Wm. L. Duncanson
Clerk

In the Callaway Circuit Court
April 17th 1833.

Isaac N. Whyte pltf
against
Geo B. Hopkins Admr Deft } upon an appeal

The parties appear and give their oral consent in Court to a trial by the Court, whereupon the Court finds the following facts. That Bennett was indebted to Whyte in 1840. in the sum of Ninety six dollars and ninety nine cents for wages, and for one hundred & twenty one dollars and forty four cents being the one fourth of a part payment for a steam boat, owned by Bennett of which plaintiff was the 1/4 owner. That Whyte agreed to wait for the payment until he could collect a note due for the balance of the steam boat, which had been sold, that Whyte brought suit on said note, and prosecuted the payor to insolvency, that his insolvency was ascertained in 1849. whereby Bennett became indebted at that time for the above sums. That Bennett became further indebted to Whyte on the 26th March 1850. for the three fourths of the fee paid to the Lawyer for suing on the note, being thirty seven & a half dollars, the whole fee being fifty dollars, and for $1. 2½/100 for postage at the same time paid That Bennett died in 1846. That Whyte gave notice to the admr of Bennett of his claim against Bennett of which the service was on the 3d of August 1833. the defendant having

plead all the Statutes of limitations the Court finds ~~for~~ that three years have elapsed since the indebtedness of Bennetts admr. accrued & renders Judgment for the defendant thereupon it is adjudged by the Court that the plaintiff take nothing by his appeal, but that the defendant recover of the plaintiff and John Horka=day & David M. Whyte his securities in the appeal bond his costs by him about his defence in this behalf expended, and that he have execution

As Clerk of the Circuit Court in and for Callaway County State of Missouri I do certify that the above contains a full true and complete copy of the Judgment entered in the case of Isaac N. Whyte against Geo B. Hopkins admr of A. G. Bennett as fully as the same appears upon the record in my office.

Given under my hand and official seal this 22d day of February 1856.

Geo Bartley Clk

Why to
or { Co. Judgment
Hopkins a Senior
ck for $100 paid.
Geo. Bartley ck

Isaac T Whyte
v
Geo. B Hopkins, admr.
of A B Ennett, decd.

In the Supreme Court of Missouri in error to Callaway Circuit Court.

Fee bill of costs in the Supreme Court to be paid by said Geo. B Hopkins, admr. as aforesaid

Wm E Dunscomb's costs as Clerk of said Sup. Court.

writ of error 1.50 appearance 20	1.70
docketting case, 50 errors & joinder 90	1.40
argt. & sub., 50 trial & judgt. 1.00	1.50
2 orders, 50 filing papers, 40	.90
certified opinion, 75 certified judgt., 75	1.50
Copy of judgment certified, 75	75
	$7.75
R B Jackson Marshal	.30
	8.05

Attest
Wm E Dunscomb
Clk Sup. Court Mo

To the Sheriff of
Callaway County, Mo.

I return this Execution Satisfied

W. T. Snell Shff
Callaway County Mo

Aug 25th 1855

January Term 1856

Abbyte

N J Free Bill

Benevolty adm

Costs

R B Jackson 30

Wm E Dunscomb 7.75

$8.05

Callaway

Isaac. J. Whyte
Vs
Geo. B. Hopkins admr of
A G Bennett decd

This was a proceeding before the county court of Ccallaway Co by the plaintiff Whyte to secure the allowance of a claim against the estate of said decd

The defence was the Statute of limitation of three years. Plaintiff proves that his cause of action did not accrue within the three years next following the date of the administration. Defts replies that plaintiff did not exhibit his claim within three years after his right of action accrued [redacted]

The Court found that the claim was barred by the Statute of limitation thereupon plff brought his case here by writ of error & to reverse the judgment below he relies upon the following points & authorities

1st If the cause of action did not accrue within 3 years next following the date of the administration then the general law of limitation & not the special law governs cases like this are not provided for under the administration law & hence are not embraced in the 2nd Sect of the 4th art of 5th act. If they are provided for at all it is by some other law & if by any other the gen'l limitation law governs

2nd Plaintiff is protected from the operation of the limitation under either act from the fact that he & deceased sustained to each other the relation of Partners

Whyte pltff
vs ξ Brief of Pltff
L. B. Hopkins adm'r

Whyte
vs
Hopkins admr of
Bennett

In Sup Ct
Jany Term
1856

The transcript of the Clerk is wrong in this Town in the finding of the court it says. Bennett was indebted to Whyte in 1840 Whereas it should be in 1846

2nd The insolvency of the maker of the note ~~the~~ set out in the petition is said to have been ascertained in 1849, When in fact it was not discovered until the 26th of March 1850 That Whyte filed his ap in the County Court in June 1852 & gave notice in Aug 1853

J F Jones atty
for Whyte

Isaac T Whyte
Vs Errors in transcript
Geo B Hopkins admr
of
A G Bennet decd

Jones for
appellant