

ment at an early day is to be presumed. Purchasers of real estate do not expect, after their purchase, to be confronted with the resurrection from the distant past of a tax claim. The common idea respecting taxes, general or special, is their speedy extinction by payment, or translation by legal proceedings into tax titles. The complainant does not come before the court as one who has been long endeavoring to collect a just debt, or even as one who has waited for years in over-generous reliance upon the willingness of owners of lots to repay him the money he has expended in improving their property. He has simply purchased a *cadaver*, and is seeking, by the mystic powers of a court of equity, to galvanize it into life. The claim is stale.

Judgment will be entered in favor of the defendants.

PORTUONDO *v.* MONNE and others.

(*Circuit Court, S. D. New York.* July 13, 1886.)

TRADE-MARK—INJUNCTION—GENERAL USE OF SYMBOL.

Preliminary injunction denied where affidavits of defendants make it doubtful whether the plaintiff has so had exclusive use of symbols sought to be restrained as to make their use by defendants likely to pass their wares as his.

In Equity.

Franklin Swayne, for orator.

Wingate & Cullen, for defendants.

WHEELER, J. The plaintiff shows that he has used the symbols mentioned in his bill of complaint to designate cigars made by him, and that the defendants make use of the same. But the affidavits of defendants show that the same symbols were used by others upon cigar-boxes before, or about the time, the plaintiff began to use them. These affidavits make it doubtful whether the plaintiff has so had the exclusive use of the symbols that the use of them by the defendants serves to pass their cigars as those of the plaintiff. This question cannot safely be determined upon the affidavits, but should be established by evidence regularly taken in due course. The plaintiff does not appear to be entitled to a preliminary injunction. Motion denied.

ALLEN v. O'DONALD and others.

(Circuit Court, D. Oregon. July 19, 1886.)

1. HUSBAND AND WIFE—MORTGAGE BY—RELEASE OF WIFE—SALE OF PROPERTY—RIGHTS OF CREDITORS.

A husband and wife joined in a mortgage, including certain property belonging to each, to secure the payment of the husband's debt, and after the debt was due the husband, with the assent of creditors, conveyed his property to a third person in trust, to manage the same, and, with the consent of the debtor, to sell and dispose of the same, and apply the proceeds on the debt; in pursuance of which authority said trustee sold a portion of said property, and applied the proceeds accordingly, and thereupon the creditors released their mortgage on the same. *Held*, (1) that the property of the wife was not discharged from liability for the remainder of the debt by such release unless she was pecuniarily injured thereby; (2) that a provision in such mortgage that, in case of default in the payment of the debt, the mortgage may be foreclosed according to law, is mere surplusage, and did not prevent the debtor and creditors from making other arrangements for the disposition of his property in satisfaction of the debt, and the release of the same from the mortgage, without affecting the liability of the wife's property, unless it appeared that the property was sacrificed or disposed of at less than its market value, to her injury; (3) that the burden of proof is on the creditor to show that such sale was fair, and the proceeds justly applied, or that the property of the wife was not thereby wrongly made to bear any more than its proportion of the debt; (4) that the voluntary forbearance of the creditors to sue the debtor while this amicable arrangement between him and them for the disposition of his property was being carried out, did not amount to an extension of time to the debtor which would discharge the property of the wife from the mortgage, for such forbearance was neither for a time certain, nor for a valuable consideration, and left her at liberty to pay the debt, and proceed against the husband, subrogated to the rights of the creditors.

2. EQUITY—LIMITATIONS—NOTE AND MORTGAGE.

The rule of limitation in a suit in equity on a note and mortgage to recover the contents of the former, and enforce the lien of the latter therefor, is the same as in an action thereon at law.¹

3. COURTS—JURISDICTION OF UNITED STATES CIRCUIT COURT—PROMISSORY NOTES—NEGOTIABILITY.

By the law-merchant a promissory note payable to order or bearer is negotiable as long as it exists unpaid, and the indorsee or assignee thereof may, under section 1 of the judiciary act of 1875, (18 St. 470,) sue thereon in this court without reference to the citizenship of his indorser or assignor.

4. STATUTE OF LIMITATIONS—PART PAYMENT ON NOTE.

Under section 25 of the Code of Civil Procedure a payment on a promissory note, at any time after its maturity, by any one who may be compelled to pay the same, constitutes the point of time from which the limitation against an action thereon commences to run.²

5. EQUITY—EVIDENCE—NEW MATTER IN ANSWER.

New matter in an answer in equity, or an allegation not responsive to the bill, is not evidence, and the burden of proof is on the defendant to support it.

6. SAME—ANSWERS ON INFORMATION AND BELIEF—WEIGHT.

General allegations, made on information and belief, without any verifying circumstance of time, place, or amount, even when responsive to the bill, are not entitled to much weight as evidence.

Suit to Enforce Lien of Mortgage.

George H. Williams and Henry Ach, for plaintiff.

¹See note at end of case, part 1.

²See note at end of case, part 2.