

REED ET AL. V. CLARK.

{3 McLean, 480.}<sup>1</sup>

Circuit Court, D. Michigan.

Oct. Term, 1844.

STATUTES—CORRECTING PRINTED  
ACTS—LIMITATION OF ACTIONS.

1. A printed statute may be corrected by the enrolled bill filed in the department of state.
2. A plea of the statute of limitations is not favored in law.
3. In the exercise of their discretion the court will not give leave to file this plea out of time, especially where there has been negligence and there is no pretence of merits.

{This was an action at law by Reed & Mix against Clark.}

Mr. Douglass for plaintiffs for defendant.

OPINION OF THE COURT. This action was brought on a judgment of the supreme court of New York, rendered in 1830. Several pleas were filed, and the cause now stands for trial. The defendant asks leave to plead the statute of limitations, and as an excuse for not having before filed this plea, he alleges that he was ignorant of the law, having been misled by the printed copy of the statutes. The law is alleged to have been erroneously copied from the original bill in the office of the secretary of state. This law was passed in 1820, and has been acted on by the courts up to this time. The printed acts are declared to be the law of the land and are received as such, having been published by authority, and under the special superintendency of the secretary of state, by all the courts of the state. We do not suppose that this would prevent the courts, under all circumstances, from receiving the original enrolled bill to correct an error. But this point need not be decided, as there are other grounds on which the motion may be considered and decided.

It is not pretended that the defendant has a defence to the merits. He relies solely upon the technical plea of the statute. Although this is a legal defence it is not a conscientious one, and it is not favored in law. When pleaded in time, the defendant is entitled to the benefit of it; but when leave is asked to file such a plea out of time, the discretion of the court may be exercised, as the justice of the case may require.

On sufficient showing, the court will always permit a plea to be filed which may be essential to the merits of the case; but they will not give leave to file out of time a plea of the statute of limitations. This will always be refused where there has been negligence, especially where there is no pretence of a meritorious defence. Leave refused.

<sup>1</sup> [Reported by Hon. John McLean, Circuit Justice.]

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