WEST *v.* WOODS and another.[1]

(Circuit Court, E. D. Louisiana. November 20, 1883.)

JURISDICTION—MATTER IN DISPUTE.

It is the settled doctrine that, so far as concerns courts of the first instance, the declaration or the pleading of the plaintiff presenting his claim is the sole test by which the jurisdiction is to be decided, so far as the matter in dispute is concerned.

Exception to Jurisdiction on the ground that the matter in dispute does not exceed the sum of $500.

Charles B. Singleton and *R. H. Browne,* for plaintiff.

W. S. Benedict, for defendant.

BILLINGS, J. The petition presents as the cause of action an open account for the sum of $797.51, with interest upon the various items from the dates when they respectively accrued. The exception or plea to the jurisdiction sets up that a credit of $350 was purposely omitted by the plaintiff, and that his acknowledgment shows this; that therefore the matter really in dispute is only $447.51. The settled doctrine is that, so far as concerns courts of the first instance, the amount or value stated in the declaration or the pleading of the plaintiff presenting his claim is the sole test of jurisdiction. The acknowledgment of the plaintiff would, of course, support a plea of payment *pro tanto,* but it would be only as proof in support of a counter-plea on the part of the defendant.

The subsequent admission of the plaintiff, showing a less amount really due than claimed, could have no greater effect upon the question of jurisdiction than a verdict or final judgment. *Kanouse* v. *Martin,* 15 How. 207. "The words 'matter in dispute' do not refer to disputes in the country, or the intentions or expectations of the parties concerning them, but to the claims presented on the record to the legal consideration of the court. What the plaintiff thus claims is the matter in dispute, though that claim may be incapable of proof, or only in part well founded." See, also, *Gordon* v. *Longest,* 16 Pet. 97, and Curt. Comm. § 436; *Sherman* v. *Clark,* 3 McLean, 91. The jurisdiction, when dependent upon the amount in dispute, in case of appeal or writ of error, is determined by a different standard; there the test is the amount in dispute at the time the appeal is taken or the writ of error sued out. Where the declaration shows the requisite amount is demanded, this court has jurisdiction, and the amount finally found to be actually due can be considered only with respect to the costs.

The exception must be overruled.

[1] Reported by Joseph P. Hornor, Esq., of the New Orleans bar.

SHEIDLEY, Adm'r, etc., *v.* AULTMAN and others.

(*Circuit Court, N. D. Ohio, W. D.* June Term, 1883.)

1. PRACTICE—USE OF DEPOSITIONS AFTER DEATH OF THE DEPONENT, IN SUIT BROUGHT BY ADMINISTRATOR.
   The rule in chancery is that if the testimony was competent when the deposition was taken and filed, it remains competent, and the subsequent death of the party does not affect its use on the trial. The administrator merely takes up the case as it stood when the intestate party died.

Motion to Suppress Testimony made by Complainant.

Lee, Brown & Lee, for motion.

Lynch & Day, for respondents.

WELKER, J. The complainant, Benjamin A. Sheidley, in his life-time, filed his bill in chancery against C. Aultman, Jacob Miller, H. R. Wise, and G. M. Ogden, alleging that there had been a partnership venture in cattle in the state of Nevada, which had not been settled, and setting forth the proportionate interest of himself and other partners in the partnership transaction. Aultman, Miller, and Wise make a joint answer, and deny the terms on which Sheidley alleges the parties agreed to in said partnership contract, and stating different terms in the agreement, and also filed a cross-bill, alleging in it a great loss sustained by them in the enterprise, and charge fraud against the complainant. This is denied by the complainant. In his life-time the deposition of complainant, Sheidley, was taken in his behalf; and after such deposition was taken and filed, the defendants, Aultman, Miller, and Wise, gave their depositions in their own behalf; but during the time their depositions were being taken Sheidley was sick, and unable to be present and attend to the examination of the respondents, and after the completion and the filing of these depositions the complainant died. The suit has been revived in the name of the administrator, and he files this motion to suppress the testimony of the respondents so taken, because the suit is now between the administrator of Sheidley and the respondents, and is incompetent to be used on the trial, under section 858 of the Revised Statutes. The complainant now offers to withdraw the deposition of Sheidley, the original complainant.

This raises a question of practice in our national courts of considerable importance. The rule in chancery is that if the testimony was competent when the deposition was taken and filed, it remained competent, and the subsequent death of the party does not affect its use in the trial; that the administrator merely takes up the case as it stood when the intestate party died. 2 Abb. Pr. p. 707, § 208; *Vattier* v. *Hinde*, 7 Pet. 252.

I do not think the statute cited changes this rule of equity. The motion is therefore overruled.

BAXTER, C. J., concurs.