

anterior to the recovery of the judgment, and the original defendant cannot plead that the judgment was obtained against him by fraud. 2 Saund. Pl. & Ev. 255; Freem. Judgm. §§ 131-133, 150.

In *Cook v. Darling*, 18 Pick. 393, in an action of debt on judgment, defendant pleaded that at the time of the commencement of the action he was not, and never had been, an inhabitant of the commonwealth, that he was not in the county in which it was said that he had been served, and that he had no notice of the action. Plaintiff demurred. The court say: "The judgment declared on is a domestic judgment of a court of common-law jurisdiction, to which writ of error lies to reverse the judgment, if erroneous; but, until reversed, it is conclusive. Demurrer sustained."

In *Richards v. Skiff*, 8 Ohio St. 586, an offer being made to prove that the defendant at the time of entering judgment was but two years old, and that no service of process had been made on him, the court said: "The record in this case is not silent. It recites that due notice had been given. This is a finding of the court, and, being shown by a record importing absolute verity, cannot be contradicted." See, also, *Walker v. Cronkite*, 40 Fed. Rep. 134; *Turner v. Malone*, 24 S. C. 403. Notwithstanding that there are some cases to the contrary, the weight of authority is that the case of a *feme covert* is no exception to the rule. Freem. Judgm. § 150, and cases cited.¹ Especially is this true when the record nowhere discloses the fact that the defendant is a *feme covert*. The principle is that, when a party has had his day in court, and has been afforded the opportunity of a defense, the judgment settles all questions made, or which could have been made, pertinent to the issues. So long as such judgment remains unreversed, it is conclusive.

In this proceeding, judgment must be for plaintiff. If the defendant wishes to secure her rights, she must attack the original judgment in some direct proceeding. Freem. Judgm. § 134.

LATTA v. CLIFFORD et al.

(Circuit Court, D. Colorado. January, 1891.)

EJECTMENT—LIMITATION OF ACTION—ADVERSE POSSESSION.

Since there is no statute of Colorado on the subject of title by adverse occupation, and the common law as it stood in the fourth year of James I. has been adopted, (Gen. St. Colo. p. 170,) 21 years' adverse possession of land is no bar to ejectment by the holder of the fee-simple title.

At Law.

S. L. Carpenter, for plaintiff.

S. E. Broune, for defendants.

¹Morse v. Toppan, 3 Gray, 411; Swayne v. Lyon, 67 Pa. St. 441; and cases quoted by Freeman in the sections referred to. On the other side, see a list of cases quoted in 12 Amer. & Eng. Enc. Law, p. 89, note 2.

HALLETT, J. This is an action of ejectment, to which defendant Clifford answers that the cause of action did not accrue within 21 years. It appears that defendant intended to plead 21 years' possession of the land in controversy, and plaintiff accepts the answer in that way, and demurs to it; so that the question for consideration is whether 21 years' adverse possession of lands in this state will bar an action for the possession by the holder of the fee-simple title. It is conceded that we have no act of assembly of such purport. As limiting actions for the recovery of real estate, we have only the act of 1874, which requires five years' payment of taxes under claim and color of title. Gen. St. p. 675. No such rule was recognized by the common law. Angell, Lim. (6th Ed.) p. 9. We have adopted the common law as it stood in the fourth year of James I. Gen. St. p. 170. The first act of the English parliament limiting real actions to 20 years was 21 James I. c. 16, some years after the time fixed by our act. Probably 32 Hen. VIII. c. 2, may be invoked in a proper case as being part of the common law in the fourth year of James I., but the later act was not in the common law at that time. The act of 21 James I. has not been accepted as common law in this country, as appears from numerous acts of the several states. 3 Washb. Real Prop. (5th Ed.) p. 179, note. If the English act was regarded as common law, the legislation of the several states would be in very different terms. There is a rule of common law relating to incorporeal hereditaments which is referred to in 3 Washburn, as follows:

"The difference, however, between them consists in this: that common law fixes what length of enjoyment of an incorporeal hereditament, like a way, a water-course, and the like, shall be deemed sufficient evidence of an ownership of the right; while, as to the land, the period is fixed by statute, and is called a 'limitation,' beyond which no man may set up a title adverse to the presumed title of him who has been permitted for that length of time to enjoy uninterrupted possession of the same. The theory of prescription was that the right claimed must have been enjoyed beyond the period of the memory of man, which for a long time in England went back to the time of Richard I. But, to obviate the necessity of such an impossible proof, it became customary to rely upon the presumption of a deed having been given, and of its having been lost, after showing an enjoyment for a sufficient length of time. The matter is regulated in England now by statute, (3 & 4 Wm. IV. c. 71,) and, in the United States, grants of incorporeal hereditaments are presumed upon proof of an adverse enjoyment which has been exclusive and uninterrupted for twenty years, or the period of time fixed by the respective statutes of the several states as the limitation in respect to lands themselves."

This rule relates to a different subject, and is applicable only in analogy to the statute of the state. In this state it could only be applied in connection with the five-years act of 1874, for the reason that there is no other act of limitation as to realty. The failure of the assembly of this state to enact a law on the subject of title by adverse occupation in connection with the act of 1874 is very significant. It shows that in the opinion of the assembly the time has not arrived for enacting a rule on that subject. This is a new country, in which presumptions as to titles are as yet not much needed.

The demurrer to the third answer will be sustained.

BIRD v. UNITED STATES.

(District Court, D. Maine. January 22, 1891.)

1. DISTRICT ATTORNEY—FEES.

Counsel fees allowed to a United States district attorney by the court cannot be reduced by the attorney general.

2. SAME.

A district attorney is not entitled to fees for obtaining warrants for the removal of prisoners arrested in one district and triable in another.

3. SAME.

But he is entitled to a *per diem* for attendance before a commissioner to examine poor convicts applying for discharge, and for attendance before a commissioner on days when recognizances are taken, though no witnesses are examined.

At Law.

George E. Bird, *pro se*.

Isaac W. Dyer, U. S. Atty.

WEBB, J. This is a suit for the amount of sundry fees for official services as United States attorney.

1 and 2. The judge who presided at various trials on indictments which resulted in verdicts of conviction allowed certain counsel fees to the petitioner under section 824 of the Revised Statutes. The attorney general cut off from the counsel fees approved by the court in all \$80.

3. This item is for preparing and presenting papers to procure warrants for the removal from this district to the district where they were triable of accused persons found and arrested here. For these services in each case an allowance of \$10 is demanded.

4. A *per diem* fee for each of seven days for attendance before United States commissioners in cases of persons charged with violations of law, at \$5 per day, \$35, disallowed by the accounting officers upon the theory that business transacted before the commissioners on days when no witnesses were examined does not warrant the charge of a *per diem* fee.

5. Attendance on 33 separate days before commissioners, to examine poor convicts applying for discharge under section 1042 of the Revised Statutes. This item was amended before the hearing by striking out from the petition the charges of April 6, 1888, for examination of Vead Libby; that of May 28th, in the case of Mary C. Purcell; and that of May 29th, in case of Sarah T. Conner, leaving charges in 30 cases, at \$5 per day in each, \$150. These charges were disallowed, because it was held by the accounting officers that no fee is provided for such services.

6. The petition was further amended by striking out the whole of this item, consisting of attorney's fees of \$10 in *U. S., Plff., v. Hannah F. Freeman*, and of \$5 in *Same v. Albion Drake et als.*

FACTS FOUND:

I find that the attorney performed all the services specified in this petition; that the disallowances stated were made by the accounting officers upon examination of his accounts, forwarded after due presentation,