

247; Hogan v. Kurtz, 94 U. S. 779; Floyd's Heirs v. Johnson, 2 Litt. (Ky.) 114; Jackson v. Wheat, 18 Johns. 40; Parsons v. McCracken, 9 Leigh, 495.

That there shall be no accumulation of disabilities is distinctly provided by section 3453 of the Tennessee Code, which reads as follows:

"3453. No person can avail himself of a disability unless it existed when his right of action accrued; but when two or more disabilities then exist, the limitation does not attach until all are removed."

These principles have equal bearing upon the 2,000-acre tract held under grant to Jacob Hammon. There was evidence tending to show that Hammon began adverse possession several years before the death of plaintiffs' ancestor, and that this possession was continued for more than seven years, including a period of more than three years after his death. Appellees have insisted that Hammon's possession was not of such a character as to be the open and notorious possession necessary to start the statute. The evidence as to this is not of such a character as to enable us to say that the error of the circuit court in regard to the effect of adverse possession upon plaintiff's title was harmless. There was evidence of adverse possession, and defendants were entitled to a correct charge as to the effect of such possession if they found it to be open and notorious.

The appellants presented the questions of law we have discussed in four distinct requests for instruction. Each request was refused. The charge was for the most part in distinct antagonism to the doctrine embodied in these requests. For the error in the charge as to the necessity of a connection between McCoy's adverse possession and the subsequent possession adverse to McCoy, and for the error in refusing the charges requested by appellants, the judgment must be reversed, and a new trial awarded.

AMERICAN GRAPHOPHONE CO. v. EDISON PHONOGRAPH WORKS.

(Circuit Court, D. New Jersey. June 24, 1895.)

EQUITY PRACTICE—PLEA.

A defendant in a suit in equity interposed a plea setting out certain agreements by which defendant alleged that it was licensed in perpetuity to make a patented machine. The complainant filed a replication to the plea. Upon examination of the agreements the court found them insufficient to sustain the claim set up in the plea. *Held*, following *Pearce v. Rice*, 12 Sup. Ct. 130, 142 U. S. 28, that the plea should be overruled.

This was a suit by the American Graphophone Company against the Edison Phonograph Works. On replication to plea to the bill.

Pollok & Mauero, for complainant.
Dyer & Driscoll, for defendant.

ACHESON, Circuit Judge. In *Pearce v. Rice*, 142 U. S. 28, 12 Sup. Ct. 130, the supreme court distinctly held that, under the practice in chancery as modified by equity rule 33, when, by filing a repli-

cation, issue is taken upon a plea, the facts, if proven, will avail the defendant only so far as in law and equity they ought to avail him. The force of that ruling was not at all weakened by the decision in *Horn v. Dry-Dock Co.*, 150 U. S. 610, 14 Sup. Ct. 214, that, when the established plea meets and satisfies all the claims of the bill, it ought, in law and equity, to avail the defendant so far as to require a final decree in his favor, and that matters wholly foreign to the issue made by the pleadings are not to be considered. In the still more recent case of *Green v. Bogue*, 15 Sup. Ct. 975, the doctrine laid down in *Pearce v. Rice*, supra, was reiterated and acted upon by the supreme court. Such being the authoritatively settled rule of practice, it follows that notwithstanding the execution of the written agreements set out in the plea is proved, and even if it be conceded that it is also shown that all those agreements were executed with the knowledge and consent of the complainant, and for the purpose stated in the plea, it is yet incumbent upon the court to look into the agreements to see whether, as asserted by the plea, the defendant was thereby "licensed in perpetuity to make and sell, under the graphophone patents, including the patents referred to in said bill of complaint, a machine called the 'phonograph,' and supplies therefor." Accordingly, such an examination of the agreements has been carefully made by the court, and with a result unfavorable to the defendant. I am unable to discover that the agreements of August 1 and October 10, 1888, purport to invest the defendant with a perpetual license to manufacture and sell under the complainant's patents. Nor do I perceive that Lippincott had authority so to deal with the complainant's patents. His rights with respect to the graphophone patents are to be found in the two agreements between him and the complainant,—one original, and the other supplemental,—dated, respectively, March 26 and August 6, 1888. The rights thereby conferred upon Lippincott were personal to himself, and were subject to certain terms and conditions. I am of the opinion that the agreements relied on, even when considered together, did not confer upon the defendant the license set up in the plea. Beyond this it is not necessary now to go.

And now, June 24, 1895, the plea is overruled, without prejudice to the defendant's right to answer the bill; and leave is granted to the defendant to file an answer within 30 days from this date.

GERMAN-AMERICAN INV. CO. OF NEW YORK v. CITY OF YOUNGSTOWN.

(Circuit Court, N. D. Ohio, W. D. May 24, 1895.)

No. 5,286.

1. EQUITY—JURISDICTION—INADEQUATE REMEDY AT LAW.

The city of Y. advertised for bids for certain bonds about to be issued by it. Complainant submitted the highest bid, and was notified that the same would be accepted. It then asked for information and documents relating to the bonds, in order to submit them to its counsel, and, after receiving an opinion from its counsel that the bonds were invalid, declined