

actions shall not be limited by the provisions of chapter 103, but shall be governed by the special statute that prescribes their limitation. It is argued that section 3195 does not limit actions upon county warrants, because chapter 103 provides that "civil actions can only be commenced within the periods prescribed in the following sections," while section 3195 has no provision about the commencement of actions upon county warrants, but simply declares that warrants "shall be barred" at the expiration of the periods it specifies. This contention sticks in the words of these statutes, and ignores their legal effect. It goes without saying that the provision that "civil actions can only be commenced within the periods prescribed in the following sections" does not prevent the commencement of actions after those periods have passed; nor does it prevent the prosecution of such actions to judgment, if the defendants fail to interpose by demurrer or answer their pleas of the statute of limitations. When such pleas are interposed, and then only, the statute takes effect, and bars the actions by the lapse of time. The legal effect of this provision, then, is, not to prevent the commencement of actions after the time limited has expired, but to bar their successful maintenance if the defendants properly interpose their pleas of the statute. The provision in section 3195 that the warrant shall be barred has exactly the same legal effect upon actions commenced upon these warrants after the times there limited have expired. It prevents the successful maintenance of the actions if the lapse of time is properly pleaded. It bars a recovery in that event, and this is the effect, and the only effect, of the limitations in chapter 103. If one of these statutes limits actions, the other does, for each permits the commencement of actions after the times limited, and bars recovery in them upon proper pleas of the lapse of time and then only.

It is contended that the provision of section 3195 that after the lapse of time there fixed "such warrant shall be barred, and shall not be paid, nor shall it be received in payment of any taxes or other dues," is a mere direction for the guidance of the county officers, and is in no sense a limitation of the action upon the warrant. It may be conceded that the declaration that it "shall not be paid" was made for the guidance of the county treasurer, and that the direction that it shall not be received in payment of taxes or other dues was intended to define the duty of the collector of the revenue. But what shall be said of the positive enactment that "such warrant shall be barred"? That declaration in no way defined or affected the acts or the duties of the county officers. It was not their province to determine whether or not a county warrant was barred, and there was but one place where that declaration could have any effect, and that was in a court of justice, after an action had been commenced upon the warrant. "The familiar rule that all the words of a law must have effect rather than that part should perish by construction" (*City of St. Louis v. Lane*, 110 Mo. 254, 258, 19 S. W. 533) forbids the rejection or disregard of this declaration, and if it is not disregarded it is a plain statute of limitations. An act of the legislature which makes the lapse of time a complete bar to an action or to a cause of action has all the essential features of a statute of limita-

tions. Mr. Wood, in his work on Limitations, declares that "statutes which destroy a remedy or a right unless enforced within a certain specified period are statutes of limitation." Wood, *Lim.* § 1. The legislature of the state of Missouri selected and used in section 3195 the most expressive and effective word in the English language to effect a limitation upon an action. They declared that the warrant should be "barred" after the lapse of time there specified. "Barred" is the word in general use to characterize the effect of a statute of limitations. An action or a cause of action is commonly said to be "barred" by such a statute. Counsel for the plaintiff in error, in his answer in this case, pleads that "this action is barred by the statute of limitations of ten years." In section 65, c. 1, Rev. St. Mo. 1889, the legislature of that state declared that certain demands not presented within one year "shall be forever barred against the partnership effects administered." In section 86 of the same chapter they declare that, if certain claims be not exhibited within two years after the publication of notice of letters of administration, "they shall be forever barred." In sections 4558, 6770, 6771, and 6799 of their Revised Statutes of 1889 they have used this word in the same sense, and in section 3195 they declare that, if five years shall elapse after the date of the county warrant without action or presentation, or if, after due presentation, five years shall elapse after funds are set apart to pay the warrant without action or presentation, the warrant shall be barred. The conclusion is irresistibly forced upon our minds by this unequivocal declaration of the statute that actions upon county warrants were limited by this section, and hence that by the express provision of section 6791 they were not limited by section 6774. The judgment below must be affirmed, with costs, and it is so ordered.

AMERICAN COTTON OIL CO. v. KIRK et al.

(Circuit Court of Appeals, Seventh Circuit. July 9, 1895.)

No. 198.

CONTRACTS—MUTUALITY.

A contract to sell and deliver 10,000 barrels of oil, at a stipulated price, in such quantities per week as the buyer may desire, to be paid for as delivered, but which contains no agreement on the part of the buyer to purchase and receive any particular quantity of oil, is not binding, for want of mutuality.

In Error to the Circuit Court of the United States for the Northern District of Illinois.

This is an action brought by James A. Kirk and others, partners, doing business at Chicago, against the American Cotton Oil Company, a corporation of Ohio, doing business at Cincinnati, to recover damages for the nondelivery of a certain quantity of cotton-seed oil according to contract. The declaration set out the contract substantially as the plaintiffs' evidence tended on the trial to show it, as follows: "That the plaintiffs, at the request of the defendant, bargained with the defendant to buy from the defendant, and the defendant then and there sold to the plaintiffs, a large quantity, to wit, ten thousand barrels of prime yellow cotton-seed oil, at the price of thirty-two and one-half