

brought suit at law upon the policy, and stands upon the very terms of his contract. He asks no reformation of it, and cannot, in this action at law, avoid its express stipulations.

Error is also assigned for certain remarks of the presiding judge during the course of the trial and upon the examination of witnesses. The brief of counsel does not, as it should, refer us to the pages of the record which are thought to contain the objectionable language. We might properly, therefore, and for that reason, decline to entertain the complaint, and in fact it appears from an examination that some of the language complained of and stated at large in the brief is not contained in the record. In view of our ruling upon the question previously considered, we think it unnecessary to pass upon the language of which complaint is made. It is sufficient to say upon the subject in general that every party in a court of justice is entitled to a fair and impartial trial of his cause, and that neither court nor counsel may rightfully use language in the presence and hearing of a jury which shall tend to excite passion or prejudice, or prevent calm, dispassionate consideration of the case. *Reynolds v. U. S.*, 98 U. S. 145, 168; *Hicks v. U. S.*, 150 U. S. 442, 452, 14 Sup. Ct. 144; *Starr v. U. S.*, 153 U. S. 614, 14 Sup. Ct. 919; *Hickory v. U. S.*, 160 U. S. 408, 425, 16 Sup. Ct. 327; *Railway Co. v. Meyers*, 24 U. S. App. 295, 304, 11 C. C. A. 439, and 63 Fed. 793. The judgment is reversed, and the cause remanded, with directions to the court below to award a new trial.

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UNITED STATES v. FIRST NAT. BANK OF COFFEYVILLE.

(Circuit Court, D. Kansas, Third Division. August 13, 1897.)

1. **BILLS AND NOTES—PENSION CERTIFICATE.**

A pension certificate or check drawn to the order of a person then deceased is absolutely void.

2. **BANKS AND BANKING—PAYMENT OF VOID PENSION CHECK.**

A pension check was drawn, in the regular course of business, and without knowledge of the facts, to the order of a deceased person. The individual who received it forged the payee's signature on the back, and presented it to the defendant bank, from which it passed, for collection, through two other banks, which in turn, after collection, remitted the proceeds until they reached the defendant, which paid them over to the alleged owner. From the time when the government subsequently discovered the facts, one of the intermediate banks was in voluntary liquidation, and the other was insolvent, and its assets were in the hands of a receiver, and the alleged owner of the note was insolvent. *Held*, that the defendant was liable to the government for the reimbursement of the amount collected, and that the government was not chargeable with laches.

W. C. Perry, for the United States.

J. D. McCue, for defendant.

**WILLIAMS**, District Judge. It appears by the statement of facts in this case that one Mary L. Beard was an applicant for pension; that her application was duly considered by the pension commissioner, and in due course of time the pension was allowed her, and the United States pension agent at Topeka, Kan., issued a certificate to her,

as the mother of Calvin L. Beard, a soldier in Company C of the 7th Illinois cavalry. The said pension certificate was issued on April 12, 1893, payable to the order of Mary L. Beard, in the sum of \$1,364.40. The certificate or check was inclosed in an envelope addressed to Mary L. Beard, and deposited in the mails at Topeka, Kan. It seems further from the agreed statement of facts that the said Mary L. Beard died prior to the issuance of said check, to wit, on January 7, 1893; and the letter containing the check came into the possession of E. A. Beard, her grandson, who forged or caused to be forged the signature of said Mary L. Beard on the back of said check, indorsed it himself, and on the 13th day of April, 1893, he presented the said check to the officers of the defendant bank, and represented to them that he was the holder of said check, and that the signature of the said Mary L. Beard indorsed thereon was genuine. At that time the said E. A. Beard was unknown to any of the officers of the bank, and he was required to have some person known to the officers of the bank identify him; and, being identified by some person known to the officers of the bank, it received the said check, and advanced thereon the sum of \$364.40, and placed to the credit of the said Beard the sum of \$1,000, subject to his check when the said pension check was paid. On April 14, 1893, the defendant transmitted the said check to the National Bank of Kansas City, for collection; and the National Bank of Kansas City, on April 15th, transmitted said check to the Merchants' National Bank of St. Louis for collection; and the said last-named bank, on April 17th, presented the said check to the subtreasurer of the United States, in St. Louis, Mo., and it was paid by the assistant treasurer of the United States to the said national bank. The said Merchants' National Bank remitted the amount of said check to the National Bank of Kansas City, and the National Bank of Kansas City remitted the amount to the defendant bank, in the usual course of business. At the date of discovery of said forgery by the government, and since, the Merchants' National Bank of St. Louis has been in voluntary liquidation, and the National Bank of Kansas City has been insolvent, and its assets in the hands of a receiver. Afterwards, to wit, on April 26th, the defendant bank paid to said E. A. Beard the amount remaining to his credit on deposit in said bank. The United States did not know that Mary L. Beard was dead at the date of the issuance of said check, nor until December 19, 1895, and had no intimation or knowledge concerning the same until that date. The said E. A. Beard, shortly after the payment of the amount by the said bank, became, and ever since has been, insolvent.

The questions of law involved in this case have been so often settled, and are so simple, that it would avail nothing for this court to indulge in any lengthy opinion in regard to it. The issuance of the check to said Mary L. Beard after she was dead was an act utterly void, and the check itself was absolutely void, and no act of any one could breathe into it the breath of life, or make it of any value whatever. When the defendant bank took the check from the said Beard, the grandson of the pensioner, it devolved upon it to know that he was the legal holder of the said check, and it paid the money out at

its own risk, and peril. This is true of any transaction of a similar nature, and is so held by all courts that have passed upon kindred questions. No laches of the government can be attributed in this case, and cannot possibly afford any defense to the defendant. The loss sustained is by reason of its own neglect in paying the check. It has received from the government of the United States the amount demanded in this suit, and there is no reason in law or equity why it should not be held responsible and reimburse the government in the amount paid out. True it is that, if the bank had known of the forgery prior to the payment of the last thousand dollars, it could have saved itself in that sum, but the government did not know of the forgery. It was in no attitude to know of it. The bank should have known that the indorsement was a forgery, and that the person who presented it was not the legal holder of the check. The government has discharged its full duty by having the party arrested, tried, and sentenced to the penitentiary for this offense. Under the agreed statement of facts and the law of this case, the government is entitled to recover a judgment for the amount claimed in this case, and judgment will be entered accordingly.

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#### WRIGHTMAN v. BOONE COUNTY.

(Circuit Court, W. D. Arkansas. October 3, 1897.)

##### LIMITATION OF ACTIONS—REVIVOR OF JUDGMENTS.

Where the legislature passes a statute of limitation barring the revivor of judgments by scire facias after the lapse of ten years from their rendition, and provides further that the act shall take effect and be in force from and after one year from the date of its passage, *held*, that the act applies to existing as well as future judgments, and that past judgments, which have been rendered more than ten years, are barred unless the scire facias is issued within one year from the date of the passage of the act.

This was a proceeding by scire facias to revive a judgment.

O. S. Watkins and W. F. Pace, for plaintiff.

Hill & Brizzolara, for defendant.

ROGERS, District Judge. On the 13th day of May, 1880, George M. Wrightman recovered judgment in the district court of the United States for the Western district of Arkansas, then having circuit court powers, on warrants commonly called "County Scrip," of Benton county, Ark., for the sum of \$6,280, for his debt and damage, with interest thereon at the rate of 6 per cent. per annum from the date of said judgment until paid, together with all his costs in and about said cause laid out and expended. On the 6th of August, 1881, \$1,000 was paid on the judgment, and on the 7th day of July, 1882, the second payment of the sum of \$843.46 was made, and on the 14th of April, 1883, a third payment of \$1,176 was made, and on the 18th of March, 1885, a fourth payment of \$705.47 was made. After this the judgment was assigned to W. A. Grever and Cos Altenberg, whom the