

expenditures of the company, to which the grantees might sell the property. They well knew that the material inducement to the contract on the part of the grantees was to obtain a complete transfer of the entire interest of the grantor, in order that they might accomplish their purpose, which had been previously defeated by the outstanding interest of the grantor. The evidence shows conclusively that the attorneys in fact acted in good faith, and intended to convey, and believed that they did convey, all the mineral interest of their principal. We are strongly inclined to the opinion that the present claim of the plaintiff was an afterthought not suggested by his agents. We are confirmed in this opinion by the fact that he asserted no claim to an unconveyed mineral interest for nearly twenty years after the execution of the deed, although he had knowledge that the defendant company had made large expenditures in developing the minerals, and were in possession, claiming to hold the premises in severalty."

This judge and jury had the opportunity of seeing and hearing the witnesses, and although the judgment in that case, when brought here for review, was remanded on other grounds, nothing has occurred to diminish the great persuasive force of their opinions on the question of fact which is now before us. We are clearly of opinion, upon the whole case, that it was the intention of the purchasers from Brown to buy his entire interest in the lands; that they paid for the entire interest, and that it was their understanding that the deed conveyed it; that it was through the inadvertence and mistake of the draftsman that the deed failed to carry out the intent of the grantor, which was to convey the entire interest; and that it should be reformed. In our judgment, the contention of the plaintiff in error concerning the North Carolina statute of limitations is without merit, as that statute is not applicable to this case. We fully agree with the court below in the conclusion reached, and in the relief granted. It follows that the decree appealed from should be affirmed, and it is so ordered.

TIMMONDS v. UNITED STATES.

(Circuit Court of Appeals, Seventh Circuit. February 16, 1898.)

No. 415.

1. CLAIMS AGAINST UNITED STATES—LIMITATION.

One suing the government, under the act of March 3, 1887, providing for bringing suits against the United States, is barred as to any part of his demand arising over six years before filing his petition.

2. SAME — GOVERNMENT EMPLOYEES—EIGHT-HOUR LAW—EXTRA COMPENSATION.

Rev. St. § 3738, providing that "eight hours shall constitute a day's work for all laborers, workmen and mechanics" employed by the government, is a mere direction by the government to its agents, not a contract with its servants, and gives the latter no right to extra compensation for working more than eight hours a day. *U. S. v. Martin*, 94 U. S. 400, followed.

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

This was a petition by Richard H. Timmonds against the United States to recover compensation alleged to be due for working overtime as a government employé. In the circuit court judgment was given for the defendant, and the plaintiff sued out this writ of error.

Laurent A. Douglass, for plaintiff in error.

Frank B. Burke, for defendant in error.

Before WOODS, JENKINS, and SHOWALTER, Circuit Judges.

JENKINS, Circuit Judge. The plaintiff in error, Richard H. Timmonds, on June 24, 1895, filed his petition in the court below, alleging (1) that from December, 1866, to April 30, 1887, he was employed at various times by the United States as station engineer at the Jeffersonville depot, quartermaster's department, at a specified salary per month, varying from time to time, and ranging from \$50 to \$125 per month, and at the latter date was discharged from service; (2) that from December 7, 1889, until September 1, 1893, he was so employed at \$75 per month, and at the latter date was again discharged from service; (3) that during all the time of such service he was compelled to work 12 hours a day during each day of such service, without any special agreement that he should work 12 hours each day, or should render such service for the same amount of pay as for 8 hours a day; (4) that he was so compelled to work in excess of 8 hours a day contrary to law, and that the United States received and accepted the benefit of his additional 4 hours of labor during each day of that time. He prayed judgment for the value of his labor in excess of 8 hours a day. The court struck out of the petition all that part claiming compensation for services rendered prior to June 24, 1889, and afterwards sustained a demurrer to the petition as it stood after striking out part of it.

We are of opinion that the court below properly struck out of the petition all allegations relating to services prior to June 24, 1889. Subdivision 2 of section 1 of the act of March 3, 1887 (24 Stat. c. 359, p. 505), entitled "An act to provide for the bringing of suits against the government of the United States," provides that "no suit against the government of the United States shall be allowed under this act unless the same shall have been brought within six years after the right accrued for which the claim is made." The demurrer to the petition embracing the claim for extra hours of service from December 7, 1889, to September 1, 1893, was also properly sustained. The right to recover for such services is predicated upon the act approved June 25, 1868 (15 Stat. c. 72, p. 77), which, as embodied in the Revised Statutes (Rev. St. § 3738), provides: "Eight hours shall constitute a day's work for all laborers, workmen and mechanics who may be employed by or on behalf of the government of the United States." It is urged that under this provision any laborer, workman, or mechanic who labors in the service of the United States more than eight hours a day may recover as upon a quantum meruit for the value of the extra time so given to the service, irrespective of the contract of employment. This statutory provision has passed under the scrutiny of the supreme court in *U. S. v. Martin*, 94 U. S. 400. It was there ruled that the provision in question is in the nature of a direction by the government to its agents, and is not a contract between the government and its servants; that it does not specify what sum shall be paid for the labor of 8 hours, nor that the price shall be larger when the hours are more, or smaller when the hours are less; and that, being in the nature of a direction from the government to its agents, it does not constitute a con-

tract to pay its servants for the excess of time employed. In the case before us, we take it the allegation that the petitioner was compelled to work for 12 hours a day was not intended to mean involuntary or compulsory service beyond the 8 hours a day, but that the work he undertook required that period of service at a stipulated monthly compensation. He was under no compulsion. He could have abandoned his service if it proved distasteful or onerous. Continuing, however, in a service which required 12 hours of time each day at a stated compensation per month, he is not entitled to recover as upon an implied contract for the service in excess of 8 hours a day. The act being construed to be merely a direction to the employing officer of the government does not furnish grounds of recovery for the supposed excessive service, nor confer any right upon or interest in the servant. It is otherwise with respect to letter carriers, because the act with respect to them expressly provides that they shall be paid for the extra time in proportion to the salary fixed by law (U. S. v. Post, 148 U. S. 124, 13 Sup. Ct. 567), a provision wanting in the act under consideration. The judgment appealed from is affirmed.

CLEVELAND, C., C. & ST. L. RY. CO. v. BALLENTINE.

(Circuit Court of Appeals, Seventh Circuit. February 16, 1898.)

No. 450.

NEGLIGENCE—PERSONAL INJURIES.

A boy of 17½ years, who, out of curiosity, goes upon the premises of a railroad company to witness the accidental burning of a train of tank cars, filled with petroleum, assumes the risks of the situation; and, though he voluntarily renders some services in preventing the spread of the fire to other property, he cannot recover against the company for injuries caused by an explosion of one of the cars.

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

On the morning of January 31, 1893, the Southwestern Limited, a passenger train of the plaintiff in error, hereinafter called for brevity the "Railway Company," bound from St. Louis to Indianapolis and the east, by reason of a switch negligently left open, ran upon a siding, and collided with a train of 18 oil-tank cars, filled with petroleum oil, standing in the yards of the company at Wann, now East Alton, about 20 miles from East St. Louis. These yards were over 3,500 feet in length north and south, and over 625 feet in width. There were within the yards three small houses belonging to the Railway Company and some old stock pens and stock sheds. By reason of the collision, the forward end of the engine was driven through the end of an oil tank, and fire was communicated to the train of oil-tank cars. The passenger train, or such portion of it as had not taken fire from the collision, was moved away from the scene of the fire by means of a switch engine, and 10 of the oil-tank cars within a short time were also removed, leaving 8 oil-tank cars which were on fire. The smoke of the conflagration was dense and black, and the flames and smoke could be seen a long distance. The fire attracted the curiosity of a large number of people, and the yards were soon and during the entire forenoon occupied by from two to three hundred persons. This crowd was at different times during the forenoon warned by the servants of the Railway Company that there was danger of explosion. Hamilton S. Ballentine, the defendant in error, was a young man then 17½ years