

## MCNAMEE vs. UNITED STATES.

The United States may sue a post master for a balance before a justice of the peace of this State, if the amount claimed be within the jurisdiction of the justice.

The certificate of the Auditor of the Treasury for the Post Office Department, is competent evidence of such balance.

The defendant being of the same name mentioned in the account so certified, the presumption is that he is the same man, and no further evidence of identity is necessary.

The appellant from the judgment of a justice has no right to complain, in error, that no judgment was rendered by the circuit court against his security in the appeal recognizance.

The statute of limitations does not run against the United States.

*Writ of Error to Dallas Circuit Court.*

The United States brought an action against A. W. McNamee,

before a justice of the peace of Dallas county, on an account for \$14.55, balance claimed to be due from defendant as late post master at Loudon, Alabama. The account was regularly authenticated by the certificate and official seal of the Auditor of the Treasury for the Post Office Department. Defendant insisted that the justice had no jurisdiction, that the account was barred by the statute of limitations, and that he had paid it. Judgment against him, and he appealed to the circuit court, where the cause was tried before QUILLIN, judge, in September, 1849, sitting as a jury.

On the trial no evidence was introduced but the account sued on, with the Auditor's certificate, to the introduction of which the defendant objected, but the objection was overruled, and he excepted. Finding and judgment for plaintiff, and motion for new trial on the following grounds:

1. The finding was contrary to law and evidence.
2. The court permitted plaintiff to introduce incompetent evidence.
3. The court erred in refusing to sustain defendant's plea of limitations.
4. That it was not proven that defendant was ever postmaster in Alabama or elsewhere.

The court overruled the motion, defendant excepted.

The judgment of the circuit court was rendered against McNamee alone, and not against his security in the appeal recognizance.

JORDAN, for plaintiff.

FOWLER, District Attorney, contra.

Mr. Justice SCOTT, delivered the opinion of the court.

The competency of the plaintiff to sue being clear and the amount claimed within the jurisdiction of the justice, there would seem to be no good reason to doubt as to the question of juris-

diction, even if it had not been conferred in express terms by the act of Congress.

The certificate of the Auditor of the Treasury for the Post Office Department was properly received in evidence, his official seal proving itself. This was the law when the plaintiff in error accepted the office of post master and entered upon the discharge of his duties and has ever since been, and he has to abide the consequences.

The objection that the evidence did not identify the defendant below is not tenable. Where no particular circumstance tends to raise a question as to the party being the same, identity in name is sufficient for an inference against him. If such an objection to the full extent were to prevail "the transactions of the would could not go on," as was laid down by Lord ABINGER in *Jones vs. Jones*, (9 *Mees. & Welb.* 75,) where the name of "John Smith" was cited for illustration, the question having come up in that case from the evidence on cross examination which showed "that the name 'Hugh Jones,' in that particular part of Wales was so common as hardly to be a name." In the case before us however, there is no such evidence as to the name of McNamee or any other circumstance in proof to repel the presumption arising from the identity of name.

It is not for McNamee to object in this court that the judgment in the circuit court was not against his securities in the appeal as well as himself.

The statute of limitation was not binding upon the rights of United States; (*Swearingen, vs. U. States*, 11 *Gill. & John.* 373,) the maxim "*nullum tempus occurit regi*" applied in this case. *U. S. vs. Hoar*, (2 *Mason C. C. R.* 666.) *U. S. vs. Barford*, (3 *Peters* 12.) *State vs. Thompson*, (5 *Eng.* 47.) *Linsey vs. Miller*, (6 *Peters* 666.) Judgment affirmed.