

U. S. Rep.]

MAGILL V. MAGILL.—ESTATE OF L. COATES STOCKTON.

[U. S. Rep.]

considered and treated as money so long as they are redeemed by the bank in specie.

That the power of a collecting agent by the general law is limited to receiving for the debt of his principal that which the law declares to be a legal tender, or which is by common consent considered and treated as money, and passes as such at par, is established by all the authorities. The only condition they impose upon the principal is, that he shall inform the debtor that he refuses to sanction the unauthorized transaction of his agent within a reasonable period after it is brought to his knowledge: *Story on Prom. Notes*, §§ 115, 389; *Graydon v. Patterson*, 13 Iowa 256; *Ward v. Evans*, 2 L.I. Rayn. 930; *Howard v. Chapman*, 4 Carr. & Payne 508.

The objection that the bond did not draw interest pending the civil war is not tenable. The defendant, Ward, who purchased the land, was the principal debtor, and he resided within the lines of the Union forces, and the bonds were there payable. It is not necessary to consider here whether the rule that interest is not recoverable on debts between alien enemies during war of their respective countries, is applicable to debts between citizens of states in rebellion and citizens of states adhering to the National Government in the late civil war. That rule can only apply when the money is to be paid to the belligerent directly. When an agent appointed to receive the money resides within the same jurisdiction with the debtor, the latter cannot justify his refusal to pay the demand, and, of course, the interest which it bears. It does not follow that the agent, if he receives the money, will violate the law by remitting it to his alien principal, "The rule," says Mr. Justice WASHINGTON, in *Conn v. Penn*, 1 Peters C. C. R. 496, "can never apply in cases where a creditor, although a subject of the enemy, remains in the country of the debtor, or has a known agent there authorized to receive the debt, because the payment to such creditor or his agent could in no respect be construed into a violation of the duties imposed by a state of war upon the debtor. The payment in such cases is not made to an enemy, and it is no objection that the agent may possibly remit the money to his principal. If he should do so, the offence is imputable to him, and not to the person paying him the money;" *Denniston v. Imbrie*, 4 Wash. C. C. 395. Nor can the rule apply when one of several joint debtors resides within the same country with the creditor, or with the known agent of the creditor. It was so held in *Paul v. Christie*, 4 Harris & McHenry's Rep. 167.

Here the principal debtor resided, and the agent of the creditor for the collection of the first bond was situated within the Federal lines and jurisdiction. No rule respecting intercourse with the enemy could apply as between Marbury, the cashier of the bank at Alexandria, and Ward, the principal debtor residing at the same place.

The principal debtor being within the Union lines, could have protected himself against the running of interest on the other two bonds, by attending on their maturity at the bank, where they were made payable, with the funds necessary to pay them. If the creditor within the Confederate lines had not in that event an agent

present to receive payment and surrender the bonds, he would have lost the right to claim subsequent interest.

Judgment affirmed.

SUPREME COURT OF PENNSYLVANIA.

MAGILL V. MAGILL.

Rules of Court cannot be suffered to become instrumentalities to defeat the rights of suitors.

Where a respondent in her answer to a libel in divorce, through haste and surprise and the rapid movements of libelant, failed to claim an issue to try the facts denied therein, as she should have done, under the 80th rule of the Court of Common Pleas, but within eleven days thereafter she applied to the court for leave to amend her answer in that respect, in view of the fact that the amendment, if allowed, would not have delayed the final result, it should have been granted.

Appeal from the Common Pleas of Allegheny County.

THOMPSON, C. J.—Rules are indispensable aids in the routine business of courts, and to this only they properly apply. Being subject to the authority which gives them existence, they are administered in subordination to the rights and equities of suitors. In other words, they are not to be instrumentalities to defeat those rights; but their provisions are always adhered to when, in any neglect of them, rights have accrued which it would be inequitable or unjust to disturb. Where, however, a failure to comply with their requirements in any given case, is the result of mistake, haste, or surprise, and positive injury is likely to ensue to a party, courts will not adhere to them simply on account of the rule, at the expense of justice and the just rights of parties. Hence amendments to fulfil requirements, are generally allowed, when offered without unreasonable delay, and before much expense and costs have accrued.—*Pittsburgh Le. al Journal*.

ORPHAN'S COURT

ESTATE OF L. COATES STOCKTON.

(*Legal Gazette.*)

1. The action of assumpsit for use and occupation is not a common law remedy, but under the Statute, 2 Geo. II. cap. 19, sec. 14, it lies whenever one man holds possession of the real estate of another under an agreement expressed or implied.
2. The action may be sustained by a sheriff's vendee against the tenant in possession at the time of the sale, and the damages will be measured by the value of the use of the land between the time of the acknowledgment of the deed and the removal of the tenant.

In the matter of the Estate of L. Coates Stockton, deceased.

Sur exceptions to Auditor's report.

Opinion by BREWSTER, J., delivered July 3, 1869.

The deceased was, in his lifetime, tenant of the premises, No. 216 Market Street, under a lease executed by George W. Conrad. There was a mortgage on the property, prior in date to the lease. Suit was brought upon the mortgage, judgment obtained, and the premises sold to George A. Twibill, October 5, 1863. The purchaser obtained his deed from the Sheriff March 7, 1864. Shortly thereafter he served a notice upon the tenant to quit, with which the tenant