

BOYD AND HANCE  
 vs.  
 HARRIS ET AL.  
 AND  
 HARRIS ET AL.  
 vs.  
 LAVIELLE ET AL.

DECEMBER TERM, 1850.

[LIMITATIONS—BONDS GIVEN BY HEIR ENTITLED TO ELECT LIABLE TO THE PRESUMPTION OF PAYMENT, LIKE MORTGAGES.]

Bonds given by the heir entitled to elect under the act to direct descents, which, by the terms of that act, are made liens on the lands, for the purchase of which they are given, until paid, though not within the statute of limitations, are yet liable, like mortgages, to presumptions of payment: and, when the circumstances are such as would induce the court to presume the payment of a mortgage, the same presumption will be made with reference to these bonds.

It is a well settled rule, both at law and in equity, that a mortgage is not evidence of a subsisting debt, if the mortgagee never entered, and there has been no interest paid or demanded for twenty years: these facts, alone, authorize and require the presumption of payment.

As courts of equity have adopted the period of twenty years as a bar to the right of redemption, in imitation of the first clause of the statute of limitations, so they have also adopted the ten years, fixed in the proviso, for prosecuting after disability removed.

In this case, upwards of twenty years elapsed from the date and forfeiture of the bond, given by the heir entitled to elect, and sixteen from the time when the heir in whose favor it was given attained age, before demand was made. It was HELD—that the claim could not be asserted as a lien.

[The agreement and statement of facts, upon which this cause came before the court, is as follows:

“In this case, various questions have arisen between James Kent, as a creditor of Alexander Harris, deceased, and as purchaser of parcels of the real estate of the deceased, on the one part; and Mackall Harris and others, heirs at law of Joseph Harris, deceased, and as such, claiming to be creditors of the said Alexander Harris, deceased.

An amicable adjustment of these questions, is, in many respects, desirable; and, the counsel for the parties believe, that