Case No. 509.

ARCHER v. POOR.

{5 Cranch, C. C. 542.}

Circuit Court, District of Columbia. March Term, 1839.

LIMITATION OF ACTIONS—ACKNOWLEDGMENT—SUFFICIENCY.

An acknowledgment of a claim is not sufficient to take a case out of the statute of limitations.

{See note at end of case.}

At law. Assumpsit for use and occupation. To take the case out of the statute of limitations, the plaintiff offered in evidence the defendant's letter to the secretary of the navy, in which he says, "I could have availed myself of the insolvent laws of the District, but preferred paying all debts as soon as possible, not omitting Mr. Archer's claim."

THE COURT (THRUSTON, Judge, absent) said it was not a sufficient acknowledgment to take the case out of the statute. See Wetzell Bussard, 11 Wheat. {24 U. S.} 309, and Bank of U. S. v. Moore, {Moore v. Bank of Columbia,} 6 Pet, {31 U. S.} 93.

Mr. Dermott, for plaintiff.

Mr. Bradley, for defendant.

{NOTE. In Clementson v. Williams, 8 Cranch, (12 U. S.) 72, Chief Justice Marshall held that it is not enough to take the case out of the act that the claim should be proved or be acknowledged to have been originally just, but that the acknowledgment must go to the fact that it is still due. See Bell v. Morrison, 1 Pet. (26 U. S. 351; Kampshall v. Goodman, Case No. 7,605. To take a case out of the act, there must be an express promise to pay, or circumstances from which an implied promise may fairly be presumed, in addition to the admission of a present subsisting debt. Moore v. Bank of Columbia, 6 Pet. (31 U. S.) 86. See contra Cowan v. Magauran, Case No. 3,292. For other cases in which acknowledgments have been held sufficient, see Arnold v. Dexter, Case No. 557; Penaro v. Flournay, Id. 10,916. *Held* insufficient in Thompson v. Peter, 12 Wheat, (25 U. S.) 565.}

[1] {Reported by Hon. William Cranch, Chief Judge.}