

Case No. 1,198.

BEATTY v. VAN NESS.

[2 Cranch, C. C. 67.]¹

Circuit Court, District of Columbia.

Dec. Term, 1812.

PRACTICE—FILING PLEA OF LIMITATIONS AFTER RULE—DAY.

The court will permit the plea of limitations to be filed after the rule-day, upon an affidavit showing it to be a fair defence under the circumstances of the case.

BEATTY v. VAN NESS.

At law. Assumpsit [by Beatty's administrator against Van Ness, administrator of Burnes] for money had and received, brought under the act of Maryland of 1791, (chapter 45, § 5,) to try the title to some city lots claimed by plaintiff's intestate.

The defendant, after the rule-day, moved to file the plea of limitations, upon his affidavit that he ordered the pleas to be filed by his attorney before the rule-day; that this attorney was absent attending the trial of Wilkinson; that Burnes had been in possession more than twenty years, &c.

THE COURT, (nem. con.) upon this affidavit, permitted the plea to be filed, considering it a fair defence under the circumstances.

[NOTE. Upon the trial of this cause, the jury found a verdict for defendant, and, on writ of error, the supreme court affirmed the judgment of the circuit court, treating the case upon its merits. *Beatty v. Burnes*, 8 Cranch, (12 U. S.) 98.]

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