

Case No. 4,656. FARMERS' & MECHANICS' BANK V. MELVIN ET AL.
[2 Cranch, C. C. 614.]¹

Circuit Court, District of Columbia.

May Term, 1825.

TRUST-FUND—CLAIM ON JUDGMENT OF MORE THAN TWELVE YEARS' STANDING.

In allowing claims against a trust-fund, as between contending creditors, a claim upon a judgment of more than twelve years' standing must be rejected without pleading the statute of limitations, as there was no time when the debtor, or his administrator, could plead it.

[This action was brought by the Farmers' & Mechanics' Bank of Georgetown against James Melvin and others.]

Upon exception to the report of the auditor who had allowed a claim of Cruikshank upon a trust-fund, it appeared that the claim was upon a judgment of more than twelve years' standing.

J. Dunlop, for the other creditors, contended, that, by the Maryland statute of limitations of 1715 (chapter 23, § 6), this judgment cannot be given in evidence, and is prima facie of no effect.

Mr. Marbury, contra, contended that the creditors cannot take that exception, as non constat, that Mr. Melvin, the administrator of the debtor, would plead the statute; and the court has decided that it must be pleaded.

But THE COURT (MORSELL, Circuit Judge, not sitting) decided that as there was no time when the administrator could plead it, and as the act is peremptory, the judgment must be taken, prima facie, to be void; and rejected the claim.

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