

NEALE v. WALKER.

{1 Cranch, C. C. 57.}¹

Circuit Court, District of Columbia. Jan. Term, 1802.

PLEADING AT LAW—GENERAL ISSUE—STATUTE
OF LIMITATIONS.

The defendant cannot avail himself of the statute of limitations upon the general issue.

Assumpsit for goods sold and delivered. Issue non assumpsit.

Mr. Simms, for defendant, contended that under the act of Virginia of 1793, § 9 (Rev. Code, p. 115), every article which appeared in the plaintiff's account to be charged more than one year before the action brought, ought to be rejected by the jury; upon which Mr. Taylor, for plaintiff, moved the court to instruct the jury that they were not to regard ¹²⁶⁸ the act of limitations, as it was not specially pleaded.

Mr. Simms, for defendant, contended that this act differs from common acts of limitation in that it was imperative to the jury. The seventh section enacts that all actions or suits founded upon any account for goods, wares, and merchandise, "sold and delivered, or for articles charged in any store account, shall be commenced and sued within one year next after the cause of such action or suit, or the delivery of such goods, &c. and not after." The ninth section declares, that "to prevent any doubt in the construction hereof, it is hereby declared, that the before mentioned limitation of one year, shall take place and be computed from the respective dates or times of delivery of the several articles entered or charged in any such account; and that all such articles as shall have been of more than one year's standing when the action or suit was commenced, shall be disallowed and rejected, and verdict shall be given, or judgment

rendered for no more than the amount of such articles as appear to have been actually charged or delivered within one year next before the commencement of the suit as aforesaid.”

But THE COURT decided that the time was not put in issue by the plea of non assumpsit; and the jury were only to try the issue joined, and so instructed the jury.

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

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