

PATRIOTIC BANK OF WASHINGTON V.
WEBSTER.[2 Hayw. & H. 47.]¹

Circuit Court, District of Columbia. May 15, 1851.

LIMITATION OF ACTIONS—DEFENDANT BEYOND
SEAS—FOUR DAYS WITHIN JURISDICTION.

In a suit against the endorsers on a promissory note, the defendant, answering, interposed the plea of the statute of limitations, to which the plaintiff replied that the defendant was beyond seas during the time covered by the defendant's plea, and the defendant rejoined, that he was within the jurisdiction of the court for four days during the time, to the knowledge of the plaintiff. The plaintiff's demurrer to the defendant's rejoinder was *held* bad.

At law.

Jos. H. Bradley, for the bank.

D. G. Hall, for defendant.

The note on which this suit was brought was made by Henry L. Kenny, who promised to pay to the defendant [Daniel Webster] sixty days after its date, viz: 13th of September, 1837. The defendant endorsed the note over to D. A. Hall, who in turn endorsed it over to the plaintiffs. The usual counts were inserted in the declaration.

The pleas of the defendant were in substance as follows: First, that he did not undertake and promise in manner and form, as the said plaintiffs have above complained against him. Second, that the plaintiffs ought not to have or maintain their action aforesaid against him, because he saith that he, the said defendant, did not at any time within three years next before the commencement of this suit, undertake or promise in manner and form as the said plaintiffs have above thereof complained against him. Third, that the plaintiffs ought not to have or maintain their action aforesaid against him, because he saith that

the several supposed causes of action in the said declaration mentioned did not, nor did any or either of them accrue to the said plaintiffs at any time within three years before the commencement of this suit, in manner and form as the said plaintiffs have above thereof complained against him.

Replication to the defendant's pleas. That the defendant was beyond seas at the time the debt came due and was payable, and continually thereafter to the bringing of the suit.

Rejoinder to the plaintiffs' replication. That on the 3d day of October, 1840, the defendant returned to the city and was here four days, and his being here was well known to the plaintiffs.

The plaintiffs demurred to the defendant's rejoinder. Judgment for the defendant on the demurrer.

¹ [Reported by John A. Hayward, Esq., George C. Hazelton, Esq.]

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