

## REYNOLDS v. CALVERT.

[3 Cranch, C. C. 211.]<sup>1</sup>

Circuit Court, District of Columbia. Dec. Term, 1827.

LIMITATION OF ACTIONS—TAKING CASE OUT OF  
STATUTE—WHAT SUFFICIENT.

After the cause of action was barred by the act of limitations, the defendant said he received the things, but paid for them by a check on the Bank of Washington, and referred the witness to the teller of the bank. *Held*, not sufficient to take the case out of the statute.

Assumpsit for goods sold and delivered. The defendant pleaded the statute of limitations. At the trial of the issue joined on that plea, the plaintiff [Reynolds, administrator of Hunt] offered evidence that the defendant said that he received the goods, but paid for them by a check on the Bank of Washington, and referred the witness to the teller of that bank.

Mr. Wallach, for defendant, prayed the court to instruct the jury, that the said evidence was not sufficient to take the case out of the statute; and cited *Clementson v. Williams*, 8 Cranch [12 U. S.] 72; *Fries v. Boisselet*, 9 Serg. & R. 128; *Starkie*, Ev. pt 4, p. 895.

Mr. Scott, contra. When a defendant says he has paid in a certain way, and fails to prove the payment in that way, it is sufficient to take the case out of the statute. The statute is founded upon presumption. *Starkie*, Ev. pt. 4, p. 896; *Greenl. Ev.* 152; *Toomer v. Long*, 2 Hayw. (N. C.) 18.

Mr. Wallach, in reply. The burden of proof is not on the defendant to show payment *Beale v. Nind*, 4 Barn. & Ald. 568; *Hellings v. Shaw*, 7 Taunt. 608, 612; *Dean v. Pitts*, 10 Johns. 35.

Mr. Scott also cited *Davis v. Verdier*, 1 McCord, 320; and *White v. Potter*, 1 Cox [1 N. J. Law] 159.

THE COURT gave the instruction (nem. con.).

The jury found a verdict for the plaintiff.  
THE COURT granted a new trial, instanter.

<sup>1</sup> [Reported by Hon. William Cranch, Chief Judge.]

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