

## SUCKLEY v. SLADE.

{5 Cranch, C. C. 123.}<sup>1</sup>

Circuit Court, District of Columbia.

March Term, 1837.

## PLEADING AT LAW—PLEAS.

The defendant had pleaded the statute of limitations in due time, and had also demurred to the whole declaration. The court permitted him to withdraw his demurrer, and to let the plea of limitations remain.

Debt [by George Suckley against Henry C. Slade] upon a bond, conditioned to pay one third of the debt of Charles Slade.

The defendant had demurred to the whole declaration, and had pleaded, in due time, the statute of limitations of twelve years.

Mr. Jones, for defendant, now moved to strike out the demurrer, leaving the plea of limitations to stand as his only plea.

Mr. Marbury, for plaintiff, contended that the defendant could not plead and demur at the same time, and that therefore the whole pleading is a nullity and must go together, and then it would be too late to plead the statute, as the plea-day had long since passed. The pleading being inconsistent, there is no plea, nothing to which the plaintiff can reply. The statute must be pleaded at length, and by the rule-day; and cannot be amended. *Merryman v. State*, 5 Har. & J. 425; *Wall v. Wall*, 2 Har. & G. 79; *State v. Green*, 4 Gill & J. 331; *State v. Boyd*, 2 Gill & J. 365; *Waterfall v. Glode*, 3 Term R. 305.

Mr. Jones, in reply, cited the statute of limitations of 1715 (chapter 23, § 6), that no bond shall be good or pleadable if it be of twelve years' standing. *Carroll*

v. Waring, 3 Gill & J. 491, 499; Piatt v. Vattier, 9 Pet. [34 U. S.] 415.

THE COURT (CRANCH, Chief Judge, doubting, not having had time to look into the cases cited, but inclined to concur with the court) permitted the defendant to withdraw his demurrer, and leave the plea of limitations, as a plea filed in due time.

{See Case No. 13,588.}

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

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