

STATE BANK *vs.* BROWN.

A suit is commenced by the filing of the declaration, and the voluntary appearance of defendant, or the issuance of the writ—filing the declaration alone is not the commencement of an action.

It is no answer to a plea of limitation that plaintiff filed his declaration before the cause of action was barred, and instructed the clerk to issue a writ immediately, but the clerk did not do so until the limitation expired, as held in *State Bank vs. Carson et al.*, 5 Eng. 479.

*Writ of Error to White Circuit Court.*

DEBT, by the Bank of the State of Arkansas, against Harrison Brown, commenced in the White Circuit Court 24th of March, 1849, on a note due July 1st, 1844.

Brown pleaded that the cause of action did not accrue within three years, &c.

Plaintiffs replied that, on the 24th June, 1847, and within three years next after the cause of action accrued, she filed her petition in debt in the Independence Circuit Court thereon, and instructed the clerk to issue a writ immediately, and that the clerk.

on the 16th day of September, 1847, issued the writ, &c. That, on the 6th March, 1849, she suffered a non-suit therein, and on the 24th day of the same month, she commenced this suit.

Demurrer sustained to the replication, and final judgment for defendant.

The cause was determined below before Hon. WM. C. SCOTT, then Judge.

BEVENS, for the plaintiff.

BYERS & PATTERSON, contra, cited *State Bank vs. Carson & Frost*, 5 Eng. 479.

Mr. Justice SCOTT delivered the opinion of the Court.

The only question presented in this cause, was determined in the case of *The State Bank vs. Carson et al.*, (5 Eng. R. 479.) Let the judgment be affirmed.

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