BEEBE *vs.* BLOCK.

The principle decided in *Brown v. State Bank*, 5 *Eng. Rep.* 134, as to the sufficiency of a promise to avoid the statute of limitations, re-affirmed.

Error to Hempstead Circuit Court.

The plaintiff instituted suit against the defendant on the 4th April, 1850, upon a bond dated 24th January, 1839, at 6 months, for $350.97. The defendant pleaded the statute of limitations,

to which the plaintiff replied "a promise in writing" within five years; and to sustain the issue formed on this replication, read in evidence two letters from the defendant to the plaintiff. The first letter is as follows:

Fulton, June 16th, 1849.

"Roswell Beebe, Esq.

DEAR SIR:—Gen. Royston holds my note as your agent as follows: $350.97, 6 mos. 20th August, 1839, 10 per cent from date. $200 payment 14th Jan'y, 1843. Note 159.35, 12th August, 1844, 6 per cent from date. The first note was given for lots purchased by me at sale—the other for lots purchased by M. H. Woods, to secure me in the peaceable possession of the Wood's lots. I paid Enoch I. Smith, who now has full possession of Fulton, $200.00. I think the proprietors of Fulton have done the purchasers of lots great injustice; and would not, feeling as I do, pay another cent on my purchase but for circumstances as they exist—I now propose to take up both notes with interest in Arkansas Bank paper, in which the first note is made payable at its value or equivalent deducting the $200.00 for funds paid Smith: if you accede to the proposition, please advise so as I may know how to act in the matter.

I am, very respectfully, your obt. servt.,

AUGUSTUS BLOCK."

The second letter is dated 19th August, 1849, and is, in substance, the same as the first one. The Court, to whom the issue was submitted, found for the defendant; the plaintiff moved for a new trial, and, on his motion being overruled, excepted, and has brought the case here by writ of error.

WATKINS & CURRAN, for the plaintiff.

S. H. HEMPSTEAD, contra. To take a case out of the statute, the acknowledgment must be in writing, and must contain an unqualified and direct admission of a previous subsisting debt which the party is liable and willing to pay. *Alston v. State Bank,* 4 *Eng.* 455. *Brown v. State Bank,* 5 *Eng.* 134. *Angell on Lim.* 224, 227,

Tanner v. Smart, 6 *B. & C.* 303. 8 *Cranch* 72. 11 *Wheat.* 309. 1 *Peters* 351. 6 *ib.* 86. 5 *Bin.* 573. 9 *Serg. & R.* 128. 15 *J. R.* 511. 3 *Greenl.* 97.

Mr. Justice WALKER delivered the opinion of the Court.

The only question presented by the record relates to the sufficiency of the written evidence to prove a new promise, such as would take the case out of the operation of the statute of limitation.

The letters offered in evidence were not sufficient to prove an unqualified acknowledgment of the debt as a debt then due, or a promise to pay, such as is necessary to remove the statute bar, as laid down in the case of *Brown v. State Bank,* 5 *Eng. R.* 134, and several more recent adjudications of this Court.

Let the judgment of the Circuit Court be reversed.