

BANK OF THE STATE *vs.* GRAY ET AL.

Where a replication of part payment to a plea of limitation shows, on its face, that the full period of limitation elapsed between the time of the part payment and the commencement of the suit, it is no answer to the plea, and is bad on demurrer.

*Appeal from Pulaski Circuit Court.*

S. H. HEMPSTEAD, for the plaintiff.

Mr. Justice WALKER delivered the opinion of the Court.

This was an action of debt by the Bank of the State, on a promissory note. The defendants plead the statute bar of three years limitation. The plaintiff replied part payment, in confession and avoidance. The defendants demurred, and the question is, is this replication sufficient? The bare statement of the facts will show that it is not. The note sued on fell due the 1st of April, 1844: the suit was brought on the 18th of February, 1848: the replication set forth a payment made on the 15th of April, 1844: so that between the time of this payment and the commencement of the action, more than three years had elapsed. There was certainly no error in the decision of the circuit court in sustaining the demurrer to the plaintiff's replication. Let the judgment be affirmed.