

BANK OF TENNESSEE *vs.* ARMSTRONG'S EXS.

Action of debt: three pleas, *nul tiel corporation*, *nul tiel record*, and statute of limitations—demurrer to first, issue to second, and special replication to third; demurrer to replication sustained, and judgment for defendant for costs only: HELD, That there was no final judgment, and writ of error dismissed.

*Writ of Error to Jefferson Circuit Court.*

DEBT, by the Bank of the State of Tennessee against William Armstrong. The declaration contained seven counts: the first three upon a judgment of the Circuit Court of Davidson county, Tennessee; the other four, common counts. At the return term, (April, 1847,) defendant demurred to the declaration, the Court sustained the demurrer as to the last four, and overruled it as to the first three counts, and gave judgment in favor of defendant for costs of demurrer. Defendant then filed three pleas: 1st.

*Nul tiel corporation: 2d. Nul tiel record: 3d.* That the cause of action did not accrue to plaintiff within five years next before the commencement of the suit.

At the October term, 1847, the death of defendant was suggested, and *sci. fa.* against his executors. At the April term, 1848, the action was revived against James, David and Francis Armstrong, executors of defendant. Plaintiff then filed a demurrer to defendants' first plea, a general replication to the second, and special replication to the third, alleging that she "*existed and resided*" in the State of Tennessee, &c. Defendants took issue to the replication to the second plea, and demurred to the replication to the third, and the demurrers were taken under advisement until the next term. At the following term, (October, 1848,) the Court sustained the demurrer to plaintiff's replication to defendants' third plea, and "said plaintiff replying no further to said third plea of said defendant, it is [was] therefore considered, by the Court, that said defendants have and recover of and from said plaintiff all of their costs in and about said demurrer in this suit."

It does not appear that the demurrer to the first plea, or the issue to the second, was disposed of by the Court.

The case was determined before the Hon. WILLIAM H. SUTTON, then one of the Circuit Judges. Plaintiff brought error.

YELL, for the plaintiff.

RINGO & TRAPNALL, contra.

Mr. Justice SCOTT delivered the opinion of the Court.

There being no judgment dismissing the defendants hence without day, and no disposition whatsoever of one of the issues joined in the case, there was clearly no final judgment in the cause. The writ of error must be dismissed, and the cause remanded to be proceeded with to final judgment.